TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 168

GEORGE HARRISON, TRUSTEE IN BANKRUPTCY OF THE WESTERN ROPE & MANUFACTURING COMPANY, BANKRUPT, PETITIONER,

vs.

ANNA B. CHAMBERLAIN

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 4, 1924

CERTIORARI GRANTED OCTOBER 27, 1924

(30,600)

(30,600)

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[fol. a] [Caption omitted]

[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA**

Pleas and proceedings before the Honorable R. L. Williams, Judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

In the Matter of WESTERN ROPE & MANUFACTURING COMPANY, a Corporation, Tulsa, Oklahoma, Bankrupt

In Bankruptcy. No. 2391

ANNA B. CHAMBERLIN, Appellant,

vs.

GEORGE HARRISON, Trustee in Bankruptcy of the Western Rope & Manufacturing Company, a Corporation, Bankrupt, Appellee

ADJUDICATION OF BANKRUPTCY AND ORDER OF REFERENCE—Filed May 25, 1921

At McAlester, in said District, on the 25th day of May, A. D. 1921, before the Honorable Ralph E. Campbell, Judge of said Court in Bankruptcy, the petition of Western Rope & Manufacturing Company, a corp., that it be adjudged bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Western Rope & Manufacturing Co., a corp., is hereby declared and adjudged bankrupt accordingly.

[fol. 2] It is ordered that said matter be referred to Hon. A. F. McGarr, one of the Referees in Bankruptcy of this court, to take such further proceedings herein as are required by said Acts of Congress.

R. L. Williams, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER APPROVING APPOINTMENT OF TRUSTEE—Filed June 25, 1921

At a court of bankruptcy held in and for the Eastern District of Oklahoma, at Tulsa, on this the 22 day of June, 1921.

Present: A. F. McGarr, Referee in Bankruptcy.

This being the day appointed for the first meeting of creditors herein, and due notice thereof having been given as provided by the

Bankruptcy Act and George Harrison, of Tulsa, in said district, having been appointed Trustee herein by a majority vote in number and amount of the claims of all the creditors of said bankrupt previously allowed and present at such meeting, and they having fixed the amount of his bond at $10,000.00, now, therefore,

It is ordered that the appointment and election of said George Harrison as Trustee herein be, and the same is hereby approved, and that he be and become Trustee herein upon filing his bond, with sufficient sureties, in the sum of $10,000.00, as provided by the act, to be approved by this court.

A. F. McGarr, Referee in Bankruptcy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER APPROVING BOND—Filed June 25, 1921

At a court of bankruptcy held in and for the Eastern District of Oklahoma, at Muskogee, this 25th day of June, A. D. 1921.

Before A. F. McGarr, Referee in Bankruptcy.

It appearing to the court that George Harrison, of Tulsa, and in said district, has been duly appointed trustee of the estate of the [fol. 3] above named bankrupt, and has given bond with sureties for the faithful performance of his official duties, in the amount fixed by order of the court, to-wit, in the sum of $10,000.00, it is ordered, that the said bond be, and the same is hereby approved.

A. F. McGarr, Referee in Bankruptcy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO MAKE ADDITIONAL PARTIES—Filed Aug. 31, 1921

Comes now George Harrison, the duly elected, qualified and acting trustee in bankruptcy of the above bankrupt, in the above entitled cause, and respectfully shows to the court:

That an investigation of the books, accounts and papers of the said bankrupt disclose the fact that addditional parties are necessary to a complete determination of the matter in bankruptcy and controversies and proceedings in bankruptcy in said matter in bankruptcy.

And said trustee moves that the following persons and corporations be made additional parties to this proceeding:

1. Agnes C. Gessel, B. M. Gessel, Anna B. Chamberlin, E. F. Chamberlin. Your trustee alleges that said persons hold property

of said bankrupt in trust for said trustee in bankruptcy; the said property having been acquired with funds of said bankrupt during its insolvency and in fraud of its creditors.

2. Gessel Oil Corporation, a corporation under the laws of Oklahoma. Your trustee alleges that said corporation is in fact an asset of and is owned by said bankrupt, and the stock of said corporation is in fact held by B. M. Gessel, Agnes C. Gessel, and others, in trust for said trustee in bankruptcy.

3. Gessel Motor Sales Corporation, a corporation under the laws of Oklahoma. Your trustee alleges that said corporation is in fact an asset of and is owned by said bankrupt, and the stock of said corporation is in fact held by B. M. Gessel, Agnes C. Gessel and others, in trust for said trustee in bankruptcy.

4. Buffalo Oklahoma Oil Corporation, a corporation under the laws of Oklahoma. Your trustee alleges that said corporation is in part, the extent of which is to your trustee unknown, an asset of and is owned by said bankrupt.

[fol. 4] Wherefore, an order is prayed from this honorable court making and bringing in as additional parties to this cause in bankruptcy the above named B. M. Gessel, Agnes C. Gessel, Anna B. Chamberlin, E. F. Chamberlin, Gessel Oil Corporation, Gessel Motor Sales Corporation and Buffalo Oklahoma Oil Corporation.

George Harrison, Trustee in Bankruptcy of Western Rope and Manufacturing Company, Bankrupt, by Philip Kates, Attorney.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER MAKING ADDITIONAL PARTIES—Filed Sept. 14, 1921

This cause coming on for hearing this 31st day of August, 1921, before this court sitting in bankruptcy, upon the motion of George Harrison, trustee in bankruptcy in the above entitled cause, for an order making and bringing in additional parties, to-wit:

B. M. Gessel, Agnes C. Gessel, Buffalo Oklahoma Oil Corporation, Gessel Oil Corporation, Gessel Motor Sales Corporation, Anna B. Chamberlin and E. F. Chamberlin;

And it appearing to the court that it is necessary for the complete determination of said matter in bankruptcy that said parties should [be] brought into this cause;

It is therefore ordered, adjudged and decreed, that B. M. Gessel, Agnes C. Gessel, Buffalo Oklahoma Oil Corporation, Gessel Oil Corporation, Gessel Motor Sales Corporation, Anna B. Chamberlin and

E. F. Chamberlin, be and they are hereby made additional parties to this bankruptcy matter, and

That the marshal of this court serve notice thereof upon the above named, and further notify them that they appear and be before this honorable court, sitting in bankruptcy, in the United States Court Room, in the Post office Building, in Tulsa, Oklahoma, at 10 o'clock A. M., September 14, 1921, for examination in said bankruptcy cause.

And further, that such notice be given by serving a copy of this order by the said marshal.

A. F. McGarr, Referee.

[fol. 5] MARSHAL'S RETURN

Received this order of court on September 4, 1921, and executed the same on the 6th day of September, 1921, by delivering a copy thereof to Agnes C. Gessel/, and Annie B. Chamberlain and E. B. Chamberlain, and on September 12th, 1921, by delivering a copy thereof to B. M. Gessel, and on Buffalo Oklahoma Oil Corporation by dlivering copy to B. M. Gessel/ President of said corporation, and on Gessel/ Oil Corporation by delivering copy to B. M. Gessel/, President of said corporation, and on Gessel/ Motor Sales Corporation by delivering copy to B. M. Gessel/ as director of said Gessel/ Motor Sales Corporation.

All done at Tulsa, Okla.

Henry F. Cooper, U. S. Marshal, Geo. W. Hanna.

Dated this 12th day of September, 1921.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO VACATE ORDER MAKING ADDITIONAL PARTIES—Filed Sept. 8, 1921

Comes now Agnes C. Gessel, Anna B. Chamberlin and E. F. Chamberlin, appearing specially, and for the purpose of this motion only, and move the court to set aside, vacate, and hold for naught the pretended order heretofore made on the 31st day of August, 1921, in the above cause, purporting to make the movants parties to said bankruptcy proceeding, upon the following grounds, and for the following reasons, to-wit:

I

That this court is without jurisdiction to make said order.

II

That the movants are not necessary or proper parties to said bankruptcy proceeding.

III

That the movants and each of them object to the jurisdiction of this court to determine any controversy between them, and the Trustee in Bankruptcy in said matter.

IV

That the movants cannot be compelled to submit to this court any [fol. 6] controversy between them, or either of them, and the Trustee in Bankruptcy, in the above matter, without their consent, and that the movants and each of them refuse to consent to the exercise of the jurisdiction of this court in the above matter.

Wherefore, said movants and each of them pray that said pretended order be set aside, vacated, and held for naught.

H. B. Martin, Attorney for Movants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO VACATE ORDER MAKING ADDITIONAL PARTIES—Filed Nov. 5, 1921

Now, on this 28th day of October, 1921, the above cause comes regularly on for hearing on the motion of Agnes C. Gessel, Anna B. Chamberlin and E. S. Chamberlin to vacate and hold for naught the pretended order heretofore made in said cause on the 31st day of August, 1921, making said Agnes C. Gessel, Anna B. Chamberlin and E. F. Chamberlin parties to said bankruptcy proceeding, said parties appearing specially by their attorney of record, H. B. Martin, and said Trustee in Bankruptcy, George H. Harrison, appearing by Phil Kates, his attorney of record. The Referee in Bankruptcy, Hon. A. F. McGarr, having heard the argument of counsel and being fully advised in the premises, finds that said motion should be overruled, to which finding said parties, and each of them, objects and excepts.

It is, therefore, ordered, adjudged and decreed that the motion of Agnes C. Gessel, Anna B. Chamberlin and E. S. Chamberlin to vacate the order making them parties to said bankruptcy proceedings be and the same is hereby overruled, to which said parties and each of them except.

A. F. McGarr, Referee.

[File endorsement omitted.]

In United States District Court

Petition—Filed Nov. 12, 1921

Comes now George Harrison, the duly elected, qualified and acting trustee in bankruptcy of Western Rope and Manufacturing Company, and respectfully shows to the court:

[fol. 7] That Anna B. Chamberlain and Agnes Gessel, formerly A. C. Leftwich, have been made and are parties to this bankruptcy proceeding.

That on September 18, 1917, A. C. Leftwich, then secretary and treasurer of said bankrupt company, with funds of the said company, purchased from the Central National Bank of Tulsa a certain cashier's check number 10557 of said bank, payable to Anna B. Chamberlain, the mother of said A. C. Leftwich, and said Anna B. Chamberlain duly endorsed the same and placed the proceeds thereof, to-wit, the sum of $9,500.00, to the credit of said Anna B. Chamberlain in the First National Bank in Broken Arrow, and used the said funds to purchase certain land in Tulsa County, Oklahoma. That on March 23, 1920, the said Anna B. Chamberlain sold the said land for $13,000.00, and with the proceeds of said sale purchased from the Exchange Trust Company certain mortgages on land in the City of Tulsa, of the value of $10,000.00.

Your petitioner says that the above facts appear from the records of the said bankrupt, and the testimony in said bankruptcy matter.

Your petitioner says that on September 14, 1921, the said Anna B. Chamberlain and Agnes Gessel were examined touching the said mortgages, and on September 21, 1921, the said Anna B. Chamberlain sold the said mortgages to the Liberty National Bank of Tulsa, receiving from one W. L. Lewis, and officer of said bank, the sum of $10,000.00 in currency. That the said mortgages were recorded in the name of the Exchange Trust Company, and the assignments to the said Anna B. Chamberlain were not recorded in her name; and the assignment by her to the Liberty National Bank were not and are not recorded.

Your petitioner further shows that immediately upon learning of the fact that the said Anna B. Chamberlain had with funds of the bankrupt, purchased the said land, and converted the proceed- into the said mortgages, and on October 21, 1921, the said trustee instituted a suit in the District Court of Tulsa County, Okla., to compel the said Anna B. Chamberlain to turn over to the trustee the said mortgages; and on October 28, 1921, caused the said Anna B. Chamberlain to be examined in the bankruptcy court touching the possession of the said mortgages; and at said hearing the said Anna B. Chamberlain testified that she had sold the said mortgages for $10,000.00, receiving payment from the said Liberty National Banb in currency, which currency she has secreted and refuses to inform the court where the same is located.

[fol. 8] Your petitioner says that the actions of the said A. C. Leftwich in purchasing the said cashier's check, and of the said Anna B.

Chamberlain in converting the said mortgages into currency, constitute a gross and flagrant fraud on the bankrupt and the creditors, and that the trustee in bankruptcy is in danger of losing the said proceeds of the funds so taken from the bankrupt.

That said Anna B. Chamberlain and said Agnes Gessel did all of said things with intent to defraud said Western Rope & Mfg. Co. and the creditors thereof and place said funds beyond the reach of said creditors and of this court.

Your petitioner says that the circumstances of this case are such that this court should, through its trustee or marshal or a receiver appointed for that purpose, take possession of the said sum of $10,000.00 in currency, and compel the said Anna B. Chamberlain to deliver the same into the custody of this court.

Your petitioner further says that on October 28, 1921, the said Anna B. Chamberlain in the hearing before the referee, about the hour of noon, admitted that she had the said sum of $10,000.00 in currency then in her possession; and at about the hour of 1:30 on said day, an order of injunction from this court, sitting in bankruptcy, was served on the said Anna B. Chamberlain, by the marshal of this court, enjoining her from spending or otherwise disposing of the said money, or any part thereof.

Wherefore, your petitioner prays that an order issue from this court forthwith, directing the said Anna B. Chamberlain to deliver to this court the said sum of $10,000.00 in currency, or in whatever form the same may now be held; and that an order issue against her to show cause why the same should not be turned over and delivered to the trustee in bankruptcy, for distribution among the creditors of said bankrupt as part of its estate, and for all other relief.

Philip Kates, Attorney for the Trustee.

Sworn to by George Harrison. Jurat omitted in printing.

[fol. 9] NOTICE TO ANNA B. CHAMBERLAIN

Hearing of above order is set for Nov. 12, 1921, at 10 A. M. in U. S. Dist. Court room at Tulsa.

W. V. McClure, Clerk, by C. T. Bennett, Deputy. (Seal.)

I hereby accept service for Agnes Gessel.

Anna B. Chamberlain.

Nov. 10, 1921.

U. S. MARHSAL'S RETURN

I hereby certify and return that I received this notice at Tulsa Nov. 10th, 1921, and served the same by delivering a true and correct copy of same to Anna B. Chamberlain in person, and at the same time and place I served a copy of same on Agnes Gessel by leaving

same with Anna B. Chamberlain, a member of the same household, at their residence about two miles southeast of Tulsa, Nov. 10, 1921.

Henry R. Cooper, U. S. Marshal, by E. H. Hubbard, Deputy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

DEMURRER OF ANNA B. CHAMBERLIN—Filed Nov. 12, 1921

Comes now Anna B. Chamberlin, appearing specially and for the purpose of objecting to the jurisdiction of the court, demurs to the petition of George Harrison, Trustee, exhibited in this cause against her upon the following grounds and for the following reasons, to-wit:

I

This honorable court has no jurisdiction to entertain said petition.

II

The rights of the parties cannot be determined summarily upon petition.

III

The allegations of said petition are not sufficient to show that the Trustee in Bankruptcy acquired any title to the property claimed in said petition.

[fol. 10] Wherefore, the said Anna B. Chamberlin prays that she may go hence without day.

H. B. Martin, Attorney for Anna B. Chamberlin.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MINUTE OF ORDER OVERRULING DEMURRER

Tulsa, Saturday, Nov. 12, 1921.

Court convened in Special Session, Hon. R. L. Williams, Judge, present and presiding.

(Caption omitted)

Order.—Defendant in open court files Demurrer of Anna B. Chamberlain to petition filed. Counsel allowed to amend petition by interlineation.

Demurrer re-filed, overruled. Anna B. Chamberlain excepts and asks for additional time to answer.

Order.—Anna B. Chamberlain given ten days within which to answer. Both sides agree that restraining order heretofore granted by referee remains in full force. Motion is continued until first Monday in January at Muskogee.

IN UNITED STATES DISTRICT COURT

ANSWER OF RESPONDENT, ANNA B. CHAMBERLIN, TO THE AMENDED PETITION OF GEORGE HARRISON, TRUSTEE—Filed Nov. 23, 1921

Comes now the respondent, Anna B. Chamberlin, and for her Answer to the Amended Petition filed and exhibited against her in said cause by the complainant, George Harrison, Trustee, on the 12th day of November, 1921, says and avers:

I

That respondent is advised and believes, and therefore says and avers, that the pretended order whereby it was attempted to make this respondent a party to this cause, which order was made by the honorable Referee in Bankruptcy of this court, A. F. McGarr, was improperly made, and without jurisdiction, in that no facts were alleged sufficient to confer jurisdiction upon the said Referee in Bankruptcy, to make such order, and respondent therefore says that she denies that she is now, or has at any time been a party to this cause, and respondent says that she has never consented to become a party to this cause, and does not now consent thereto.

[fol. 11]

II

Respondent further says and avers that she is advised and believes, and therefore avers that the Amended Petition of the said George Harrison, Trustee, exhibited against her in this cause as aforesaid, does not state facts sufficient to confer jurisdiction upon this honorable court to proceed against this respondent upon said Amended Petition.

III

Respondent further says that the Amended Petition of the said George Harrison, Trustee, exhibited and filed against her, this respondent in this cause, does not state facts sufficient to constitute any cause of action in favor of said complainant and against this respondent.

IV

And respondent further says that this Amended Petition is not prosecuted in manner and form in accordance with the rules governing equity proceedings in the courts of the United States, nor in ac-

cordance with the laws governing proceedings, either in equity or in bankruptcy, in the courts of the United States, in that such proceeding is attempted to be prosecuted summarily, whereas, under the laws and rules governing procedure in the courts of the United States such action cannot, over the objection of this respondent be prosecuted summarily, but must be prosecuted in a plenary action. And respondent says that the necessary facts to give to this honorable court jurisdiction of said cause are not pleaded in said Amended Petition.

V

For further answer and response to said Amended Petition respondent says and avers that heretofore, to-wit: on the 21st day of October, 1921, the said George Harrison, Trustee, commenced an action against this respondent and others in the District Court of Tulsa County, Oklahoma, to recover the mortgages and notes described in said Amended Petition. That such action is still pending and undetermined in the District Court of the County of Tulsa and State of Oklahoma, which court has full and complete jurisdiction of the subject matter thereof, and parties thereto.

VI

Respondent for further Answer says and avers that she is informed and believes, and therefore avers the fact to be, that none of the debts represented by claims allowed or allowable against said bankrupt existed on September 18, 1917, at the time it is alleged in said [fol. 12] Amended Petition that the said bankrupt was wrongfully deprived of its funds in the sum of $9,500.00.

VII

Respondent further answering says that on or about the 17th day of September, 1917, one Agnes C. Leftwich, the daughter of this respondent, was employed by and interested in the business of the said bankrupt. That all of the stock — said bankrupt was owned at the time by one Ben Gessel, and the said Agnes C. Leftwich. And this respondent is informed and believes that at that time said bankrupt was wholly solvent, and able to pay all of its obligations, and that the said Ben Gessel wrote a check upon the account of said bankrupt in the Central National Bank of Tulsa, Oklahoma, for the sum of $9,500.00, and presented the same as a gift to the said Agnes C. Leftwich. And respondent says that said Agnes C. Leftwich, being indebted to this respondent, deposited the same to the credit of this respondent, and that thereafter this respondent invested the proceeds of said check together with other moneys in the property described in the said Amended Petition of the said George Harrison, Trustee, which property this respondent afterwards sold, and now holds the proceeds of such sale.

Respondent further says that she is informed and believes that there was no fraud, actual or constructive, in said action between the

said bankrupt and the said Agnes C. Leftwich, but that the same was conducted in absolute good faith, and this respondent says that if there was any fraud in such transaction that this respondent had not then, and has not now any knowledge or notice of the same.

And respondent further says and avers that in the consideration hereinbefore set out and in good faith on her part, the proceeds of the said check has been mingled with other funds and properties belonging to her, so that the same could not now be identified by this respondent, or by any other person or means.

Respondent further says that she has not consented heretofore to the jurisdiction of this honorable court to try the matters and things hereinbefore set out, and averred, and that she does not now so consent, but objects to this proceeding upon all of the facts hereinbefore set out and averred, for want of any jurisdiction.

Wherefore, respondent prays judgment in the premises.

Anna B. Chamberlin, Respondent. ——— ———, Counsel and Solicitor.

[fol. 13] Sworn to by Anna B. Chamberlin. Jurat omitted in printing.

[File endorsement omitted.]

In United States District Court

Reply

Comes now George Harrison, the duly appointed, qualified and acting trustee in bankruptcy of Western Rope and Manufacturing Company, bankrupt, and respectfully shows to the court, for reply to the response of Anna B. Chamberlain to the petition of the trustee herein for a summary order on said Anna B. Chamberlain, to turn over to said trustee the sum of $10,000.00 in cash held by her as an asset of the said bankrupt's estate:

Your trustee denies each and every allegation of said response.

For further answer your trustee says that it appears on the face of the record in this bankrupt proceeding that the said $10,000.00 is in fact an asset of the bankrupt's estate held by said Anna B. Chamberlain in flagrant fraud and without color or claim of title, and that her assertion of title thereto is patently and flagrantly fraudulent and colorable.

That on August 28, 1921, said Anna B. Chamberlain was made a party to this bankruptcy proceeding, and that at all of the hearings in this matter, where the matter of her right to the said money was considered, the said Anna B. Chamberlain appeared either in person or by counsel, and participated in said hearings and examined and cross examined witnesses, and offered evidence in said matter.

That from the evidence offered in said bankruptcy matter, and from the testimony of the said Anna B. Chamberlain and the wit-

[fol. 14] nesses offered in her behalf, it appears that the said money is in fact held by her as an asset of the bankrupt's estate fraudulently and without right, and that her assertion of title thereto is only colorable, and is an attempt to commit a fraud on this honorable court, and an attempt to delay the administration of the bankruptcy law, and the settlement of said estate. And your trustee says that under the laws of Oklahoma, as interpreted by its highest judicial tribunal, it is immaterial whether the creditors of the bankrupt at this time, were creditors at the time the fund was diverted; because, the equitable or beneficial title to the said money, and the property purchased with it, and the money realized from the sale of said property was at all times in the said bankrupt corporation, and passed upon adjudication to your trustee, and under the bankruptcy act, your trustee upon adjudication of bankruptcy took the same status as a judgment creditor holding an execution duly returned unsatisfied.

And your trustee says that on the face of the bankruptcy record the referee is bound to and should entertain an inquiry as to whether the claim of the said Anna B. Chamberlain is fraudulent and colorable only, or whether she holds the said property and makes claim thereto in good faith; and if this court finds that said claim is merely colorable, then this court should exercise summary jurisdiction and order the said money delivered over to the trustee as an asset of the bankrupt's estate; and that said Anna B. Chamberlain has in fact been heard as in a plenary action.

Wherefore, your trustee prays that this court make a summary order requiring said Anna B. Chamberlain to deliver to the trustee in bankruptcy the sum of $10,000.00 in cash.

Philip Kates, Attorney for the Trustee.

Sworn to by George Harrison. Jurat omitted in printing.

[fol. 15] IN UNITED STATES DISTRICT COURT

ORDER OF REFERENCE—Filed Jan. 2, 1922

This cause came on to be heard on this second day of January, before the Hon. R. L. Williams, judge of the District Court, upon the motion of George Harrison, trustee in bankruptcy of Western Rope and Manufacturing Company, bankrupt, for an order requiring Anna B. Chamberlain to turn over to said trustee the sum of $10,000.00 in the possession of said Anna B. Chamberlain, as an asset of the said bankrupt.

And it appearing to the court that a determination of said motion will require an examination of the evidence in said bankruptcy case, and a finding thereon;

It is therefore ordered, that the said motion be and hereby is referred to Hon. A. F. McGarr, one of the referees in bankruptcy, to be heard by him, and for findings of fact thereon from the testi-

mony in said bankruptcy case, and conclusions of law thereon, and that said referee report to this court such findings of fact and conclusions of law.

And it appearing that the attorney for the said trustee has filed a brief on said motion, and that H. B. Martin, the attorney for said Anna B. Chamberlain, requests ten days from this date in which to file an answer brief, and it further appearing that by agreement of counsel said motion is to be disposed of on said briefs,

It is ordered that said H. B. Martin file his brief thereon within ten days from this date.

Done in open court, at Muskogee, this second day of January, 1922.

R. L. Williams, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDED ORDER OF REFERENCE—Filed Feb. 20, 1922

Now on this 20th day of February, 1922, it being made to appear to the court that the order of reference heretofore made in said cause referring to the Referee in Bankruptcy, the petition of the Trustee, George Harrison, for a summary order against Anna B. Chamberlain, to pay into court $10,000.00, is too limited in its scope.

It is therefore ordered that said matter be, and is hereby, referred to the Honorable A. F. McGarr, Referee in Bankruptcy, to take the evidence that may be offered for and against said petition, and to [fol. 16] report to the court his findings of fact and his conclusions of law thereon.

David P. Dyer, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Report of Special Master—Filed June 1, 1922

To the Honorable R. L. Williams, Judge of the District Court for the Eastern District of Oklahoma:

I, the undersigned, to whom as Special Master was referred to be heard the motion filed by Trustee of this bankrupt estate for an order requiring Anna B. Chamberlain to turn over to him the sum of $10,000.00 as an asset of the estate, and from the testimony report findings of fact and conclusions of law thereon, do report as follows:

That this matter came on for hearing before me at Tulsa on February 17, 1922, at which time the Trustee appeared in person

and by attorney, Phillip Kates, and the respondent by attorneys, H. B. Martin and —— Reynolds, whereupon, after proceeding had of which stenographic minutes were made and are filed herewith marked schedule A (see pp. 218-227), hearing was continued on motion of attorneys for respondent to permit them opportunity to have order of reference enlarged; that thereafter such order having been entered on February 20, 1922, further proceedings were had before me at Tulsa, Oklahoma, on February 22nd, at which time the same appearances were entered and of which proceedings stenographic minutes were made and filed herewith marked schedule B.

The original order of reference directed the Special Master to report his findings of fact from the testimony in said bankruptcy case and transcript of testimony taken therein is found in schedule A, the portions considered pertinent to this hearng being found at pages 131, 132, 143, 144, 145, 146, 194, 195, 196, 197, 202, 206 and 207 (testimony of Anna B. Chamberlain); 202 and 209 (testimony of Agnes C. Gessell) and 214 (testimony W. C. Craig).

The respondent has entered special appearance at all the hearings had herein and has demurred on the ground that the bankruptcy court had no jurisdiction to make her a party and proceed summarily, but has answered fully to the petition, cross examined the witnesses introduced by the Trustee and moved for continuance of hearing until she could have order of reference enlarged "to hear everything on behalf of the defendant" (respondent) (p. 227, schedule A).

[fol. 17] The evidence in this case shows that the bankrupt herein is the successor of the Western Rope and Cordage Company having taken over its assets and assumed its liabilities when the latter company was reorganized in the fall of 1917; that Ben M. Gessell, president of the bankrupt corporation, was secretary-treasurer of the Western Rope and Cordage Company and Agnes C. Gessell, then Mrs. A. C. Leftwich, was president of said company and that all of its stock, except one share owned by Mrs. Leftwich, was owned by Ben M. Gessell.

It further appears that the said Ben M. Gessell and Agnes C. Leftwich were married in November, 1920, and that for several years prior thereto a very close friendship had existed between them which, as he testifies, was such during the existence of the Western Rope and Cordage Company that "if Mrs. Leftwich at that time had asked me for anything in the world she could have had it but she didn't have the right to take money out of this company" (p. 8, schedule B); and that the respondent, Anna B. Chamberlain, is the mother of Agnes C. Gessell, formerly Leftwich, and that neither the bankrupt corporation nor the Western Rope and Cordage Company ever had any business dealings with her.

The evidence further shows that on August 30, 1917, Mrs. A. C. Leftwich withdrew $9,500.00 from the funds of the Western Rope and Cordage Company by a check payable to the Central National Bank of Tulsa, Oklahoma, with which she purchased a cashier's check payable to the respondent which was immediately deposited to their joint credit in the First National Bank of Broken Arrow

and shortly thereafter withdrawn by them and used to purchase a farm situated near Broken Arrow on October 2, 1917, the title thereto being conveyed to the respondent; that on October 16, 1917, for a consideration of $1.00 and O. V. C. the respondent, joined by her husband, conveyed this property to Agnes C. Leftwich, and that on March 23, 1920, she and the respondent conveyed said farm to G. F. Hanks for a consideration of $13,000.00 with a part of which the respondent purchased certain mortgages from the Exchange Trust Company of Tulsa and later sold to the Liberty National Bank of Tulsa, Oklahoma, for $10,000.00 in currency which she had in her possession when she testified in the bankruptcy proceedings on October 28, 1921 (p. 195, schedule A), and is the money sought to be recovered by the Trustee in this proceeding.

I find, therefore, the following facts:

1. The bankrupt corporation is the successor of the Western Rope and Cordage Company and succeeded to all of its rights, titles and [fol. 18] interests both legal and equitable.

2. That Agnes C. Leftwich, now Gessell, while an officer of the Western Rope and Cordage Company, withdrew fraudulently and without authority from the funds of said company the sum of $9,500.00 and placed it to the credit of herself and the respondent in a bank at Broken Arrow.

3. That said $9,500.00 was used by the respondent to purchase a farm near Broken Arrow, which she afterwards sold for $13,000.00 and invested $10,000.00 thereof in securities which she later sold for $10,000.00 in currency and that that amount is now in her possession.

Further, I am of the opinion that under the law the equitable or beneficial title to the said sum of $9,500.00 never passed out of the Western Rope and Cordage Company and that this bankrupt succeeded to the title thereto which it held until the appointment of a Trustee when it became vested in him; that the claim of the respondent to the said money now in her possession is based on fraud; that her claim thereto is only colorable and not real; and that the said money is an asset of the bankrupt estate subject to the summary jurisdiction of this court.

I am handing up for the consideration of the court the following papers, to-wit:

1. Original Order of Reference.
2. Amended Order of Reference.
3. Schedule A, testimony taken in bankruptcy proceedings.
4. Schedule B, testimony taken in this proceeding.
5. Memorandum filed by attorney for Trustee.
6. Memorandum filed by attorneys for certain creditors.

I further report that I have incurred in this proceeding the following expense, to-wit:

Stenographer reporting and transcribing testimony	$58.00
Hotel and traveling	$12.62
Total	$70.62

which I ask to be allowed. And ask that I be allowed fee of $100.00 for services as Special Master herein and that said expenses and fee be paid out of the estate.

[fol. 19] Dated at Muskogee, Oklahoma, May 31, 1922.

A. F. McGarr, Special Master.

ORDER OF REFERENCE—Filed Jan. 2, 1922

This cause came on to be heard on this second day of January, before the Hon. R. L. Williams, judge of the District Court, upon the motion of George Harrison, trustee in bankruptcy of Western Rope and Manufacturing Company, bankrupt, for an order requiring Anna B. Chamberlain to turn over to said trustee the sum of $10,000.00 in the possession of said Anna B. Chamberlain, as an asset of the said bankrupt.

And it appearing to the court that a determination of said motion will require an examination of the evidence in said bankruptcy case, and a finding thereon;

It is thereore ordered, that the said motion be and hereby is referred to Hon. A. F. McGarr, one of the referees in bankruptcy, to be heard by him, and for findings of fact thereon from the testimony in said bankruptcy case, and conclusions of law thereon, and that said referee report to this court such findings of fact and conclusions of law.

And it appearing that the attorney for the said trustee has filed a brief on said motion, and that H. B. Martin, the attorney for said Anna B. Chamberlain, requests ten days from this date in which to file an answer brief, and it further appearing that by agreement of counsel said motion is to be disposed of on said briefs,

It is ordered that said H. B. Martin file his brief thereon within ten days from this date.

Done in open court, at Muskogee, this second day of January, 1922.

R. L. Williams, Judge.

Attest: A true copy of above Order. W. V. McClure, Clerk, by Warren Butz, Deputy. (Seal.)

ORDER TO TAKE EVIDENCE—Filed Feb. 20, 1922

Now on this 20th day of February, 1922, it being made to appear to the court that the order of reference heretofore made in said cause [fol. 20] referring to the Referee in Bankruptcy, the petition of the

Trustee, George Harrison, for a summary order against Anna B. Chamberlain, to pay into court $10,000.00, is too limited in its scope;

It is therefore ordered that said matter be, and is hereby, referred to the Honorable A. F. McGarr, Referee in Bankruptcy, to take the evidence that may be offered for and against said petition, and to report to the court his findings of fact and his conclusions of law thereon.

David P. Dyer, Judge.

[File endorsement omitted.]

Schedule A

At Tulsa in said district on this the 14th day of September, 1921, beore Honorable A. F. McGarr, Referee in Bankruptcy, came on for hearing the examination of the bankrupt and the following proceedings were had:

Appearances of Counsel

Phillip Kates, for Trustee.
Linn & Riddle, for Bankrupt.
S. A. Mitchell, Preston C. West, Edgar A. de Meules, for various creditors.
H. B. Martin, Mr. Reynolds, specially for Mrs. Anna B. Chamberlain and Mrs. Agnes C. Gessel.

Agnes C. Gessel, of Tulsa, in County of Tulsa, and State of Oklahoma, having been duly sworn at the time and place above mentioned, testified as follows:

Examination by Mr. Kates:

Q. State your name to the court.
A. Agnes C. Gessel.
Q. You were the wife of B. M. Gessel the president of the Western Rope & Manufacturing Company?
A. Yes, sir.
Q. You were at one time—you are the same person as Agnes C. Leftwich?
A. A. C. Leftwich was my name.
Q. You were *one* secretary and treasurer of the Western Rope & Manufacturing Company, the bankrupt?
A. Yes.
Q. When did you resign as secretary and treasurer?
[fol. 21] A. About November 30, 1920.
Q. You were secretary and treasurer on November 17, 1919?
A. Yes.
Q. When were you elected secretary and treasurer of the company?
A. You mean of the Western Rope & Manufacturing Company or the Western Rope and Cordage Company? The Western Rope &

Cordage Company was succeeded by the Western Rope & Manufacturing Company and my office went right on.

Q. What year was that?

A. That was 1917, September 30th.

Q. And you were secretary and treasurer continuously until your resignation in 1920?

A. Yes.

Q. You had charge of the books and accounts of the Western Rope & Manufacturing Company as secretary?

A. Not entirely so.

Q. Who else had charge of them?

A. Well, Mr. Gessel had charge to a certain extent.

Q. As general manager?

A. And president.

Q. And president?

A. Yes, sir.

Q. But as secretary your position gave you charge of the books of the company, did it not?

A. Not entirely so.

Q. Were they jointly under your control with Mr. Gessel?

A. Well, I presume you would call it jointly so, yes.

Q. You signed checks of the Western Rope & Manufacturing Company as secretary, though, didn't you, during the term of your office?

A. As secretary and treasurer, yes.

Q. Now, Mrs. Gessel, I will hand you this check and ask if that is your signature on it?

A. Yes.

Mr. Kates: I would like to offer it in evidence.

Mr. Martin: I think we have no objection to that.

Q. Will you state what that is, Mrs. Gessel?

A. I can't tell.

Mr. Martin: It shows what it is, anyhow.

Q. That is a check for $3,555.80, drawn by A. C. Leftwich as Secretary-Treasurer of the Western Rope & Manufacturing Company to the American National Bank. Do you know what that money was used for?

A. I couldn't tell without investigation.

Q. Do you know whether that money was used for the payment of the house built by Anna B. Chamberlain on the Jenks road?

A. I know it was not.

Mr. Martin: Wait a minute. If the court please, that investigation of that issue is not proper at this time, and that calls, I believe, [fol. 22] for presentation to your honor of the objection to the jurisdiction of the order that has been made making Mrs. Gessel and Mrs. Chamberlain and Mr. Chamberlain parties to this proceeding. The general grounds of the objection are stated in the motion and there is nothing, no pleading of any character on filed to call forth the jurisdiction of this court to make such an order. The question of title to that property is not in issue in this case.

The Referee: This is simply an examination of witnesses for the purpose of tracing assets.

Mr. Martin: Let us have an exception.

Q. Do I understand now that you state that $3,555.80 was not paid to John T. Blair for the building of the house on the Jenks road then and now held in the name of Anna B. Chamberlain?

A. No.

Q. It was not?

A. No.

Q. You know that as a fact?

A. Well, yes, I know it as a fact.

Q. Can you tell then for what purpose it was paid to the American National Bank?

A. Not until I examine the books.

Q. Do you know whether it was paid to the American National Bank for the business of the Western Rope & Manufacturing Company?

A. I couldn't say that, either.

Q. But you do know that it wasn't paid to John T. Blair for this house?

A. Yes.

Q. I will ask whether it is not a fact that you bought a cashier's check payable to John T. Blair for this amount?

A. I may have, but I was paying for a building for Mr. Gessel.

Q. On November 17, 1919?

A. I can't ascertain that date without examination of the books.

Q. I will ask you whether or not it is a fact you made the payments as they became due to John T. Blair for the house that was built by Anna B. Chamberlain on the Jenks road?

A. I absolutely say no.

Q. You did not?

A. I did not.

Q. I will hand you this instrument and ask if that is your signature?

A. Yes, sir.

Mr. Kates: I will offer this as Trustee's Exhibit No. 2.

Mr. Martin: No objection.

Q. I will ask you whether or not that check was used for the purpose of purchasing a cashier's check payable to John T. Blair?

A. I don't think it was unless it was for B. M. Gessel's house. My recollection is, it was a payment to the American National Bank, [fol. 23] the first payment on an $8,000 purchase, or $8,000 worth of liberty bonds, outside the initial payment for B. M. Gessel.

Q. I hand you this instrument and ask if that is your signature?

A. My signature.

Q. That is your signature as secretary-treasurer of the Western Rope?

A. Yes, sir.

Mr. Kates: This is a check for $5,060.00 payable to the American National Bank Western Rope & Manufacturing Company, by A. C.

Leftwich, Secretary-Treasurer, which the Trustee will offer in evidence as Trustee's Exhibit No. 3, dated April 30, 1919.

Mr. Martin: No objection.

Q. Do you know what that check was for?

A. I have no distinct recollection at the time, but I think for a carload of boilers.

Q. Do you know whether that check was given to the American National Bank for the purpose of purchasing a cashier's check to O. K. Eysenbach?

A. I know it was not.

Q. That land was purchased from O. K. Eysenbach?

A. It was paid for at the time of its purchase.

The Referee: That don't seem to be an answer.

A. Yes, sir.

Q. I will hand you this instrument and ask if that is your signature?

A. I don't recall what it was for.

Q. I say, that is your signature?

A. Yes, sir.

Mr. Kates: This is a check of the Western Rope & Manufacturing Company signed by A. C. Leftwich, Secretary-Treasurer, payable to the American National Bank for $3,740.97, dated August 12, 1919, which the Trustee offers as Exhibit No. 4.

Mr. Martin: No objection.

Q. You say you don't know what that was for?

A. I do not recall without an examination of the books.

Q. Can you state whether or not this check was used for the purchase of a cashier's check payable to Anna D. Chamberlain?

A. I know that it was not.

Q. Now, I will hand you this instrument and ask if that is your signature?

A. Yes, sir, that is my signature—no, that is B. M. Gessel's signature.

Q. I will ask you, Mrs. Gessel, if you know whether it is a fact that in the spring of 1919 along in March or April your mother, Anna B. Chamberlain, purchased some land from O. K. Eysenbach on the Jenks road south of Tulsa?

A. Yes, sir.

Mr. Martin: I want to object to that question, your honor, as ir-
[fol. 24] relevant, outside the purposes of this examination.

The Referee: Objection overruled.

Mr. Martin: Exception.

A. Yes, she purchased it.

Q. And in the summer of 1919 she built a home down there which was built by John T. Blair, contractor in Tulsa?

A. Yes.

Q. Is it not a fact during the course of construction of that home the funds of the Western Rope & Manufacturing Company were used for the purpose of buying cashier's checks payable to Anna B. Chamberlain from time to time?

A. It is not a fact.

Q. Did you ever buy any checks with checks of the Western Rope & Manufacturing Company, any cashier's checks from the American National Bank payable to Anna B. Chamberlain?

A. In one instance.

Q. What was that?

A. I do not recall the date, but I think it was somewhere in the year 1917.

Q. But in the year 1919 you did not?

A. I did not.

Q. What was the amount of the one you bought?

A. I do not recall at this time.

Q. You purchased none in the year 1920?

A. No.

Q. You purchased none for O. K. Eysenbach in the year 1919?

A. Not out of the funds of the Western Rope.

Examination by Mr. de Meules:

Q. Mrs. Leftwich, on August 31st, 1920, the Turman Oil Company, of Okmulgee, was indebted on the books to the Western Rope & Manufacturing Company in the sum of $2,426.27; do you remember that item?

A. I do not remember the entire amount of our indebtedness; I presume that is correct.

Q. Was that account ever collected from the Turman Oil Company?

A. Your statement says it was collected.

Q. Do you know who collected it?

A. Sent it to the office in the general mail.

Q. How was it sent in, by check?

A. By check so your statement says.

Q. What happened to that check, do you know?

A. It was deposited, was it not?

Q. I am asking you, Mrs. Gessel?

A. It was deposited.

Q. To whose credit?

A. The Western Rope & Manufacturing Company.

Q. Now, you know that to be a fact that that check was deposited to the Western Rope & Manufacturing Company?

[fol. 25] A. Yes, sir.

Q. Now, on the books of the Western Rope & Manufacturing Company to whom was this check of $2,426.27 credited?

A. To the Western Rope & Mfg. Co.

Q. I say on the books of the Western Rope & Mfg. Co.?

A. On the books of the Western Rope & Mfg. Co.

Q. Well, Mrs. Leftwich, if an account is owing to the Western

Rope & Mfg. Company and that amount is credited, it is credited on the books of the corporation to somebody?

A. It is credited on the books of the Western Rope & Mfg. Co.

Q. I am talking now about the books of the Western Rope & Mfg. Company?

A. That is just what I am talking about.

Q. And not the books of the bank. As I understand the situation, the books of the Western Rope & Mfg. Company showed that the Turman Oil Company owed to the Western Rope & Manufacturing Company $2,426.27; am I correct in that?

Mr. Martin: Wait just a minute. On behalf of the witness, your honor, I object to this question and several others. Counsel is inquiring now about entries on the books of the Western Rope & Manufacturing Company. Those books are not before the witness and those books themselves are the best evidence and indeed the only evidence of what occurs upon them.

Mr. de Meules: She has already stated once that she knows; that the Turman Oil Company owed the Western Rope & Manufacturing Company $2,426.27.

A. I didn't say that.

Mr. de Meules: She testified that check was deposited in the American National Bank.

A. I didn't say that they owed them that amount. I said I wasn't sure about the amount, but the check received from the Turman Oil Company was deposited to the credit of the Western Rope & Mfg. Co.

Q. All right, in the bank?

A. Yes, sir.

Q. To the credit of the Western Rope?

A. Yes, sir.

Q. Now, I am asking you do you know of your own knowledge how that sum of money received from the Turman Oil Company was credited on the books of the Western Rope & Mfg. Co.?

Mr. Martin: The books of the company will show.

Mr. de Meules: I am asking her if she knows.

Mr. Martin: What concern is that to us; the books are the evidence and her knowledge is incompetent. The books are here.

[fol. 26] The Referee: Objection overruled.

Mr. de Meules: Answer the question, please.

A. I do not know the exact amount, but I do know that the check received from the Turman Oil Company was deposited to the credit of the Western Rope & Mfg. Co.

Q. In the bank?

A. Yes, sir.

Q. All right, just forget the bank. We are through with that. To whom, to whose account was the amount of money received from the Turman Oil Company placed to the credit of?

A. I do not know.

Q. Don't you know as a matter of fact that the amount of that check received from the Turman Oil Company was placed to the credit of yourself personally on the books of the Western Rope & Mfg. Company?

A. I don't see how it could be.

Q. Do you say that it was?

A. I do not know.

Q. Do you say that it was not?

A. I can't say that without an examination of the books.

Mr. de Meules: It is the noon hour and we will have the books here.

Whereupon a recess was taken until one-thirty P. M. And thereafter the hearing was resumed at one-thirty P. M. pursuant to adjournment and the following proceedings were had:

And thereupon the examination of Mrs. Agnes C. Gessel was resumed as follows:

Examination by Mr. de Meules:

Q. Mrs. Leftwich, you were in direct charge of the bookkeeping department of the bankrupt company previous to your resignation?

A. No, sir.

Q. And in the fall of 1920?

A. No, sir.

Q. Well, who was?

A. I was partially in charge.

Q. Did you exercise any supervision of the books at all?

A. Some.

Q. To what extent?

A. Well, that is hardly explainable; in the absence of Mr. Gessel, or when he was there, I acted according to his instructions, and when he wasn't there I used by own judgment.

Q. Are you familiar with the books of the company?

A. Quite familiar.

Q. Now I hand you general ledger of the bankrupt company, more particularly the page marked "Turman Oil Company, Okmulgee, [fol. 27] Oklahoma"—this is ledger of accounts receivable, and I will ask you to examine it for a moment. You are familiar with that account, of course?

A. Not entirely so, sir.

Q. Now, can you tell from that ledger sheet what the Turman Oil Company owed the bankrupt company on August 31st?

A. No, sir.

Q. You can't tell from this book?

A. No, sir.

Q. No way of knowing?

A. Not without examing every item.

Q. Well, on May 31, 1920, there appears a balance carried forward of $30,239.40, as against a credit balance of $29,813.49.

A. I didn't keep the books, and I couldn't verify that without examination.

Q. This morning you testified that you had a recollection of the check paid you by the Turman Oil Company on August 31st?

A. Yes, sir.

Q. Did you deposit that item in the bank yourself?

A. Yes, sir, I have a recollection that I did; I am pretty sure I did.

Q. I call your attention to an item appearing on page 3 of the Manufacturing Cash Book under date of August 10th, $2,426.27?

A. Yes, sir.

Q. I will ask if that isn't the Turman Oil Company item?

A. I didn't make that entry.

Q. Well, do you know whether that was the amount of the Turman Oil Company item, $2,426.27?

A. I couldn't verify that without going over the books.

Q. Well, the books are here, will you go over them?

A. Yes, sir.

Q. And Mrs. Leftwich, while you are going over the books I call your attention to an item appearing on the A. C. Leftwich account in the general ledger under date of August 31, 1920, in the sum of $2,426.27, and will ask you now to state to the court what the balance due from the Turman Oil Company was on August 10th?

A. I cannot verify what the balance would be.

Q. I am asking you to state it from the books of account.

A. Oh, from the books.

Q. Yes.

A. The balance appears to be $2,752.41.

Q. Now, then, look at your account, Mrs. Leftwich, under date of August 31st a credit of $2,426.27.

A. That is an error on the part of the bookkeeper.

Q. How do you mean an error?

A. I didn't authorize this credit of the Turman Oil Company to my account.

Q. That is what that item is?

A. Apparently so.

[fol. 28] Q. $2,426.27?

A. Yes, sir.

Q. And it was credited to your account?

A. In error.

Q. Now, you have examined the ledger account of the Turman Oil Company?

A. No, I haven't examined it. I can't tell anything by examining just the invoices. It is just the amount of the payments.

Q. I will ask you, Mrs. Leftwich, if the account of the Turman Oil Company appears to have been credited with that item of $2,426.27?

A. What is the date, please?

Q. Any date; the item of $2,426.27?

A. I don't know how far to go back.

Q. Go back as far as the ledger page will permit you, well, around August 10th or August 31st.

A. Well, th is one of twenty-two hundred something.
Q. What date is that?
A. Under date of September 9th.
Q. What year?
A. 1920.
Q. $2,282.01. I am asking you for a credit of $2,426.27, that doesn't appear in the Turman Oil Company account?
A. It doesn't appear, no, sir.
Q. How did this remittance of the Turman Oil Company come to be credited to your personal account?
A. I do not know. I deposited it to the credit of the Western Rope & Mfg. Co.
Q. In the bank?
A. Yes, sir.
Q. But it appears that that item was credited to your personal account?
A. It appears that way.
Q. And it doesn't appear to be credited to the Turman Oil Company?
A. No.
Q. When did you first discover that that situation existed?
A. In February or March, 1921.
Q. What did you do about it, if anything?
A. I didn't do anything about it.
Q. Have you returned that amount of money to the company?
A. No, sir, the amount is charged on the books against me.
Q. Charged against you?
A. Yes, sir.
Q. Where?
A. In your statement under date of May 25, 1921.
Q. You mean the auditor has charged that amount against your account?
A. Yes, sir.
Q. And that leaves a balance due by you to the company?
A. Yes, sir.
Q. You admit then that that item is owing by you to the company?
A. I admit it.
Q. Mrs. Leftwich, have there been any other items handled in the [fol. 29] same manner with reference to your personal account?
A. No, sir.
Q. None at all?
A. No, sir.

Examination by Mr. Kates:

Q. Mrs. Leftwich——
A. My name is Mrs. Gessel.
Q. Beg your pardon. That is your signature?
A. Yes, that is my signature.

Mr. Kates: I will offer this check of April 5, 1919, to the American National Bank for $1,506.67.
Mr. Martin: All right.

Q. I will ask you to state whether or not you know this check was for the purchase of a cashier's check payable to A. B. Chamberlain?
A. I know that it was not.
Q. I have voucher No. 1938, Western Rope & Manufacturing Company to cashier's check $2,740.97, marked approved for payment, A. C. Leftwich. I will ask you if you have any recollection on that subject?
A. No, sir.
Q. Do you recollect what that was for?
A. No, sir.
Q. Can you state whether or not that was used for purchasing a cashier's check payable to Anna B. Chamberlain?
A. I know it was not.

Mr. Kates: I will offer this in evidence as Trustee's Exhibit No. 6.

Q. I will hand you this and ask if that is your signature?
A. That is mine, yes, sir.
Q. This is a voucher, Mrs. Gessel, corresponding to Trustee's Exhibit No. 5 for $1,506.67, marked "B. M. Gessell"; does that voucher show that this money was charged to B. M. Gessel?
A. Yes, sir, evidently from the papers there.
Q. Was that charged by your authority?
A. Must have been.
Q. Was that charged by the authority of Mr. Gessel?
A. Must have been.

Mr. Kates: I offer this as Trustee's Exhibit No. 7.

Q. Mrs. Gessel, your mother is Anna B. Chamberlain, is she not?
A. Yes, sir.
Q. And she built a house on the Jenks road in the summer of 1919, did she not?
A. I think she began in the spring of 1919.
Q. And finished it in the fall?
A. No, I think it was later than that.
Q. Well, in the winter of 1919 or spring of 1920?
A. In the spring of 1920.
Q. Who was the contractor on that?
A. J. T. Blair.
Q. Do you know what that house cost?
A. No, sir.

[fol. 30] Mr. Kates: If the court please, I have some cashier's checks of the American National Bank which I desire to introduce in evidence. Photographs of these checks will come later in the afternoon and I will ask permission to withdraw these and substitute copies because they are records of the National Bank.
Mr. Martin: I don't care if they have any relevancy to the proceeding.

Q. Mrs. Leftwich you have heretofore identified Trustee's Exhibit No. 1, being a check of the Western Rope & Manufacturing Com-

pany payable to the American National Bank for $3,555.80. I hand you this paper which is cashier's check of the American National Bank dated November 17, 1919, payable to John T. Blair in the sum of $3,555.80, and ask whether that refreshes your recollection as to whether this check of the Western Rope & Manufacturing Company was used to purchase the cashier's check?

A. Well, was this check charged to B. M. Gessel?

Q. I believe it is.

A. Have you in mind B. M. Gessel was not only paying for a house, but building an addition at the same time?

Q. I have asked whether or not that refreshes your recollection as to whether or not the check of the Western Rope & Manufacturing Company was used to purchase that cashier's check?

A. I do not recall.

Mr. Kates: I will ask to introduce this cashier's check as Trustee's Exhibit No. 8.

Q. Mrs. Gessel, you have heretofore identified Trustee's Exhibit No. 2, being a check to the American National Bank from the Western Rope & Manufacturing Company for $2,000.00. I will hand you cashier's check of the American National Bank of date July 7, 1919, for $2,000.00 payable to John T. Blair and ask if that refreshes your recollection as to whether that $2,000.00 of the Western Rope was used for the purchase of that cashier's check?

A. Not to my recollection.

Mr. Kates: I think you had better mark these exhibits. Mark this Exhibit No. 9.

Q. Mrs. Gessel, you have identified Trustee's Exhibit No. 4, being a check of the Western Rope & Manufacturing Company signed by yourself to the American National Bank for $3,740.97, dated August 12, 1919.

A. Well, this one is No. 9; I note the other is No. 6; what is the difference?

Q. That is just the exhibit number given.

A. My recollection is that that is for a carload of boilers.

[fol. 31] Q. I hand you cashier's check of the American National Bank dated August 12, 1919, for $3,740.97, payable to A. B. Chamberlain, and ask if that refreshes your recollection as to whether the check of the Western Rope & Manufacturing Company which you have identified was used for the purchase of that cashier's check to Anna B. Chamberlain?

A. Not to my knowledge.

Q. Do you know whether that check bought that cashier's check?

A. I do not.

Q. You do not know?

A. No, sir.

Q. Well, will you say that this was not used for the purchase of that check to A. B. Chamberlain?

A. I can't say one way or the other; I know I didn't buy it.

Mr. Kates: I will offer this check in evidence and ask that it be marked Trustee's Exhibit #10.

Q. Mrs. Gessel you have identified Trustee's Exhibit #3, being a check to the American National Bank from the Western Rope & Manufacturing Company for $5,060.00, dated April 30, 1919?

A. I signed the check.

Q. I will hand you cashier's check of the American National Bank payable to Oscar Eysenbach, same date and same amount, and ask you if this check of the Western Rope & Manufacturing Company was used to purchase the cashier's check to Oscar Eysenbach?

A. It appears to have done so, but I don't know anything about the transaction until I examine the books.

Q. Can you examine the books and ascertain anything?

A. Have you the vouchers here?

Q. Some vouchers are missing from the files. Can you examine the books and tell anything from them?

A. I could if I had the voucher. We had several transactions with Mr. Eysenbach.

Q. What were those transactions?

A. Well, one thing, we bought our property, this manufacturing property, from Mr. Eysenbach.

Q. How much was paid for that?

A. I don't recall.

Q. When did you buy it?

A. I don't recall that date, either, exactly.

Q. When the property was purchased from Mr. Eysenbach was it charged to Mr. Gessel's personal account or to the account of the company?

A. I am sure it was charged to Mr. Gessel's personal account and he took out a certain portion of it and the balance was turned over to the company.

Q. The entire amount was charged to Mr. Gessel personally?

A. That is my recollection.

[fol. 32] Q. Was the property purchased for Mr. Gessel or the Western Rope & Manufacturing Company?

A. I can't recall how the deed was made, but my recollection it was made to Mr. Gessel and that he turned over a portion of it to the company.

Q. Do you recollect when that was?

A. Not exactly. There was another transaction that I can't recall; I believe Mr. Gessel would recall it.

Q. Do you remember the nature of it?

A. Not exactly.

Q. Was it the purchase of land or property?

A. I can't recall exactly.

Q. Mrs. Leftwich I will hand you cashier's check of the American National Bank to Anna B. Chamberlain for $2,566.50 and ask you whether it is a fact that the funds of the Western Rope & Manufacturing Company were used for the purchase of that check?

A. No, sir.

Q. You know it was not?
A. Yes, sir.

Mr. Kates: I will offer that in evidence as Trustee's Exhibit #11.

Q. I show you cashier's check of the American National Bank to A. B. Chamberlain for $1,506.67.
A. I think I recall that.
Q. And ask if the funds of the Western Rope & Manufacturing Company were not used for the purchase of that?
A. No, sir.
Q. Whose endorsement is on the back of that check?
A. Well, it looks like my mother's, but I wouldn't swear to it.
Q. It appears to be your mother's handwriting?
A. Appears to be.

Mr. Kates: I will offer that in evidence as Trustee's Exhibit #12.

Q. I show you check of the American National dated 6-19, payable to A. C. Leftwich and ask whether the funds of the Western Rope were used in the purchase of that check?
A. No, sir, it was my own funds.

Mr. Kates: I will offer that in evidence as Trustee's Exhibit #13.

Examination by Mr. Mitchell:

Q. Mrs. Gessel, in 1919 with whom did you live?
A. I lived with my parents.
Q. Who are your parents?
A. Mr. and Mrs. E. S. Chamberlain.
Q. Where did you live in 1919?
A. I believe southeast part of the city. It depends during what period; I believe it was southeast of the city.
[fol. 33] Q. Do you recall the address?
A. Twenty-seventh and Peoria.
Q. After you moved from Twenty-seventh and Peoria where did you move?
A. We still reside there.
Q. This residence that was built on the Jenks road that was built in 1919?
A. Yes, sir.
Q. And in 1920?
A. Yes, sir.
Q. You have never occupied that residence?
A. We have occupied it from then on.
Q. That is where Mr. and Mrs. Chamberlain live now?
A. Yes, sir.
Q. You reside with them now?
A. Yes, sir.
Q. And you have resided with them ever since they moved into that place or simply since your divorce?

A. Well, with the exception of a short period I spent in Mexico I have always lived there.

Q. Have you any brothers or sisters?

A. Two brothers.

Q. They are living here?

A. One.

Q. What is his name?

A. Theodore Chamberlain.

Q. What is his business?

A. He is a minor; he doesn't do anything.

Q. What does your father do?

A. He is retired.

Q. He does nothing?

A. No, sir.

Q. And has done nothing during 1919 and 1920?

A. No, sir.

Q. What business relation, Mrs. Gessel, has the Western Rope & Manufacturing Company ever had with your mother, Mrs. Chamberlain?

A. None.

Q. Has she ever received at any time any funds of the Western Rope & Mfg. Company?

A. No, sir.

Q. No payments of any kind have ever been made by the Western Rope & Manufacturing Company to Mrs. Chamberlain?

A. No, sir.

Q. Then when a check of the Western Rope & Manufacturing Company is drawn on the American National Bank and a check for an exact amount payable to Mrs. Chamberlain is issued, those are two separate transactions and not one transaction so far as the payment of money to Mrs. Chamberlain is concerned?

A. Something wrong.

Q. State what is wrong about those transactions?

A. Well, apparently it came through the American National Bank and according to my dealings I would want a thorough investigation of that account.

Q. Well, will you explain that statement? These two checks have previously been identified by you, the first the check of the Western Rope & Manufacturing Company signed by you, payable to the American National Bank, for the sum of $3,740.97; on the same day a cashier's check payable to Mrs. Chamberlain was issued [fol. 34] for the same amount and bears her endorsement.

A. You don't know whether it bears her endorsement.

Q. You have testified it appears to be her endorsement; do you know her handwriting?

A. Apparently so.

Q. Would you say then that that is her handwriting?

A. No, I wouldn't say one way or the other.

Q. Then you don't know whether that is her signature?

A. Apparently it is, but I wouldn't say positively it was.

Q. You wouldn't say she didn't collect that check?
A. I wouldn't say one way or the other.
Q. What do you say about whether this check was used for the purchase of that cashier's check?
A. I wouldn't say.
Q. Would you say it was not so used?
A. I say I couldn't say one way or the other.
Q. Do you know anything about this transaction?
A. I signed that check.
Q. Do you know what that check was used for?
A. Not until I investigate.
Q. This is Trustee's Exhibit #4 and the other is Trustee's Exhibit #10, cashier's check of the American National Bank, payable to A. B. Chamberlain for the identical amount. Did your mother have an account with the Producers State Bank?
A. Not to my knowledge.
Q. Mrs. Gessel, do you mean to say that you don't know whether or not your mother had an account with the Producers State Bank?
A. I do not.
Q. Did you ever make any deposits to her account in the Producers State Bank?
A. No, sir.
Q. Do you know whether or not she had a bank account with the Union National?
A. Yes, sir.
Q. You have made deposits for her in that bank?
A. Yes.
Q. Mrs. Gessel, as a matter of fact you have been acquainted with your mother's business affairs during the time you have been living with her?
A. More or less.
Q. I will ask you to state where your mother got the money to build this house?
A. She can show you.
Q. I want you to tell me.
A. I don't know entirely. I don't know the financial affairs of my mother.
Q. Do you know anything about any money she used to build that house?
A. Some.
Q. State what it is.
A. I can't exactly state what it is. She has money. She had money from her father and from my father and from the sale of some property in 1911.
Q. What piece of property was that?
A. Out on Guthrie.
Q. How much did she get for that?
[fol. 35] A. I don't know, exactly.
Q. Did you have anything to do with that transaction?
A. No, sir.

Q. How much did your mother get from her father?
A. I don't know that.
Q. How much did she get from her mother?
A. I didn't state that she did.
Q. From your father?
A. I don't know that.
Q. When did she get this money from your father?
A. I do not know.
Q. Was it during 1919?
A. I think it was 1911, I am not sure.
Q. Do you know any money she got from the sale of property or from your father or anybody else, in 1919?
A. I think she got some.
Q. Where from?
A. I said I do not know.
Q. Where do you think she got that?
A. I am not positive; it is hearsay with me.
Q. State what you understand to be the facts?
A. I don't understand anything to be the facts.

Mr. Martin: If the court please, it is physically impressive that evidence is clearly incompetent. This witness is not a party to this proceeding, she is a stranger. That evidence is clearly incompetent.
The Referee: Objection sustained.

Q. When was the land on which the house about which we have been inquiring purchased, if you know?
A. I do not know.
Q. Do you know about when it was purchased?
A. The audit will show that.
Q. Who purchased that land?
A. My mother.
Q. Who had the dealings with the former owner?
A. She did.
Q. Did you ever discuss the matter with him?
A. Yes, we all discussed it.
Q. Do you remember about the date of that purchase?
A. No, I do not.
Q. What price was paid for that land?
A. I think $9,375.
Q. Was that a cash transaction?
A. I believe they paid part cash and part notes.
Q. How much cash?
A. I don't know that.
Q. That land was bought of O. K. Eysenbach?
A. Yes, sir.
Q. I show you check marked Trustee's Exhibit #4, a cashier's check of the American National Bank dated April 30, 1919, for $5,060 payable to O. K. Eysenbach. You stated I believe a while ago that this payment was for some boilers?
[fol. 36] A. I didn't state that at all. When you handed me the check offhand I said I believed it was for a carload of boilers; then

when you handed me the draft I said we had several transactions with Mr. Eysenbach and I could not ascertain just what it was until I examined the books.

Q. This check was charged on the books to Mr. Ben Gessel's account; can you tell why that was done?

A. Not until I examine the books, no.

Q. You are willing to state this sum of $5,060 paid on April 30th to O. K. Eysenbach was not in part payment for the land on which the house was built?

A. Not to my knowledge.

Q. When was the property bought by the Western Rope & Manufacturing Company on which the works were built, do you know?

A. I can't recall that.

Q. Was it prior to 1918?

A. I can't recollect.

Q. Would you say it was before or after 1918?

A. I cannot recall; the records are there.

Q. I am asking you.

A. I said I couldn't recall.

Q. You remember pretty well the year 1919, and 1920, the last two years, Mrs. Gessel; you remember that during those two years the Western Rope & Manufacturing Company owned and operated its works here in the City of Tulsa, do you not?

A. Yes, sir.

Q. And that must have been purchased prior to 1919?

A. To a large extent, yes.

Q. As a matter of fact, they were purchased prior to 1918?

A. I said to a large extent.

Q. Do you recall any purchases that were made?

A. Of machinery?

Q. Or real estate?

A. I don't think so.

Q. Did you ever buy any machinery from Mr. Eysenbach?

A. No, sir.

Q. Never purchased anything from him but real estate or paid him for construction?

A. I have in mind a house, but I am not sure about that.

Q. As a matter of fact you recall in 1917 you paid him approximately $3,200.00 for the land on which the works were erected?

A. I do not recall.

Q. But that was about the time?

A. I do not know.

Q. Can you tell from the books, Mrs. Gessel, when that real estate was bought?

A. The real estate account has ever been a problem to me. I can't tell from the books unless I go into the intricate part.

Q. What individual would you want to interview?

A. Well, Mr. Eysenbach and two or three other parties that are still in the city we purchased real estate from.

[fol. 37] Q. But the two transactions that stand out in your mind

is the purchase of the site of the plant and the purchase of the house that belongs to your mother?

A. I don't know about that.

Q. Well, you have stated you were present and took part in the negotiations?

A. I looked over the land with them.

Q. Did you ever talk to Mr. Eysenbach about it?

A. No, sir; discussed it with Mr. Blair.

Q. Who built the house?

A. Yes, sir.

Q. You had nothing to do with the purchase of that land?

A. No, sir.

Q. You were not present?

A. Only when we looked over the land.

Q. Mr. Eysenbach was present at that time?

A. No, sir, he was not.

Q. Just Mr. Blair?

A. Yes, sir.

Q. I believe you say Mrs. Chamberlain never had any business dealings with the Western Rope & Manufacturing Company?

A. She never did.

Q. She never bought anything from them or sold anything to them?

A. Not to my knowledge.

Q. Well, you would know?

A. I think I have a pretty good conception, yes.

Mr. Mitchell: For the present, if the Referee pleases, we are through with Mrs. Gessel. There are many other things we want to inquire of her. We would like to excuse her now and examine her a little later.

Mr. Martin: How long do you want to excuse her?

Mr. Mitchell: I think we would like to have her here tomorrow.

Mr. Martin: How long is this session going to last?

The Referee: I really don't know, Judge.

Mr. Mitchell: I should say at least all this week, and perhaps next.

Examination by Mr. Martin:

Q. Mrs. Gessel, I understood you stated Mrs. Chamberlain had no business dealings with the company. I want to refresh your recollection. Did you refer to the Western Rope and Western Cordage both?

A. Well, the company as a whole.

Q. Didn't Mrs. Chamberlain loan the company all the money that they started on?

A. I borrowed some money from her, yes.

Q. How much was that?

A. A very small amount; we were not capitalized at that time.

[fol. 38] Q. How much?

A. I think $500.00 in one instance and I think the records will show that at the Central National Bank both my mother and father

went good to secure a $21,000 note against the Western Rope & Mfg. Co.

Q. Did they pay it?

A. They didn't pay it but they secured it.

Q. The Western Rope & Manufacturing Company paid it?

A. Eventually, yes.

Q. They were not out any money?

A. No.

Q. So $500.00 was the only amount they loaned?

A. That was loaned to me.

Q. Was that loan to you or the company?

A. To me for the company.

Q. It was loaned to you and by you loaned to the company?

A. Yes, sir.

Q. And that was afterwards repaid to you?

A. Yes, sir.

Q. And by you to your mother?

A. Yes, sir.

Q. Then you are correct when you stated before Mrs. Chamberlain had never had any direct business dealings with the Western Rope & Manufacturing Company or the Western Rope & Cordage Company?

A. It was all handled by me.

(Witness excused.)

H. J. GREEN, produced, sworn and examined as a witness at the time and place above mentioned, testified as follows:

Examination by Mr. Kates:

Q. State your name?

A. H. J. Green.

Q. I will ask you, to shorten the examination, whether you have in your custody the books and records of the American National Bank now in process of liquidaton?

A. I have the records as turned over the date the American National Bank was taken over by the Exchange National.

Q. You are connected with the Exchange National?

A. Yes, sir.

Q. Mr. Jake Easton is the liquidating agent?

A. Yes, sir.

Q. You have brought with you the cashier's record for the American National Bank during the year 1919?

A. Well, I will have to look to see. I have certain sheets here.

Q. Up to December 18, 1919. What date does that begin?

A. April 4th, 1918.

Q. Now that is the cashier's record as turned over by the American National Bank to the liquidating agent?

A. Yes, sir.

[fol. 39] Q. I will ask you to turn to cashier's check #21496. What does the record of the register show with reference to that cashier's check?

Mr. Martin: If the court please, we object to that evidence. That evidence is entirely incompetent except against the American National Bank. There is no proof here that these books were correctly kept; I understand the fact to be the contrary; however, there is no proof of it. This witness doesn't know except he is the custodian of the book.

The Referee: Objection overruled.

A. The record shows that cashier's check #21496 was payable to John T. Blair and was purchased by the Western Rope & Manufacturing Company for $3,555.80.

Q. I will show you Trustee's Exhibit #8 and ask you if you can identify that as the original cashier's check?

A. Yes, sir, that is the original check as shown by the register.

Q. Was that taken from the records of the bank?

A. Yes, sir, as turned over.

Q. Examine the cashier's record as of that date, November 17, 1919, and I will ask if any other cashier's check was purchased in the sum of $3,555.80 by the Western Rope & Manufacturing Company?

A. No, sir, there was not.

Q. I will ask you to turn to cashier's check #20043; what does the record show as to that check?

A. It shows that cashier's check was issued payable to A. B. Chamberlain purchased by the Western Rope & Manufacturing Company for $3,740.97.

Q. Now, I hand you Trustee's Exhibit #10 and ask you if you can identify that as the original cashier's check?

A. Yes, sir.

Q. Was that taken from the records of the bank?

A. The records as turned over.

Q. On August 12, 1919, was any other cashier's check bought payable to A. B. Chamberlain?

A. The record doesn't show it.

Q. I will ask you to turn to cashier's check #21052.

A. The record shows cashier's check was issued payable to Anna B Chamberlain.

Q. Does it show who purchased the check?

A. It doesn't show.

Q. Does it show on that date any purchase of any cashier's check by the Western Rope & Manufacturing Company, any check at all?

A. No, sir, it does not.

Q. Was there any other check on that date purchased to the order of Anna B. Chamberlain in the sum of $2,566.50?

[fol. 40] A. The record doesn't show it.

Q. Does it show any other check payable to anybody in the sum of $2,566.50 on October 14, 1919?

A. No, sir.

Q. I hand you Trustee'e Exhibit #11 and ask you if that is the original cashier's check on the bank?

A. Yes, sir.

Q. I will ask you to turn to cashier's check No. 19407.

A. The record shows that cashier's check #19407 was issued to J. T. Blair in the amount of $2,000.00.

Q. What is the date?

A. July 7, 1919.

Q. I will ask if on that date any other check was issued to John T. Blair in the sum of $2,000.00?

A. No, sir.

Q. Was any other check in the sum of $2,000.00 issued by the bank on that date, any cashier's check?

A. No, sir.

Q. I will hand you Trustee's Exhibit #9 and ask you if that is the original cashier's check from the records of the bank?

A. Yes, sir.

Q. I will ask you to turn to cashier's check #2043.

A. Check 2043 as shown by the records as being payable to A. B. Chamberlain, purchased by Western Rope in the sum of $3,740.97.

Q. I will ask if any other check was purchased on that date?

A. No, sir.

Q. I hand you Trustee's Exhibit #10 and ask you if that is the original cashier's check from the records of the bank?

A. Yes, sir.

Q. I will ask you to turn to cashier's check #18018.

A. Cashier's check #18018 as shown by the records of the bank payable to A. B. Chamberlain in the sum of $1,506.67.

Q. What is the date on that?

A. The date isn't shown by the register.

Q. What date does that follow?

A. It appears to follow the 5th unless a Sunday would happen to come in between. The subsequent date is the 7th.

Q. And the previous is the 4th of April?

A. Yes, sir.

Q. Between the 4th of April and the first entry of the 7th. Was any other check issued in the sum of $1,506.67?

A. No, sir.

Q. I will ask you to turn to check #18368.

A. Cashier's check 18368 as shown by the record was payable to O. K. Eysenbach and purchased by the Western Rope Company on April 30, 1919, in amount $5,060.00.

Q. Was any other check on that date purchased in the sum of $5,060.00?

A. No, sir.

Q. I hand you Trustee's Exhibit #14 and ask you if that is the original cashier's check from the records of the bank?

A. Yes, sir.

Q. I will ask you to turn to cashier's check #17447.

A. Cashier's check #17447 as shown by the record was purchased [fol. 41] March 6, 1919, payable to A. C. Leftwich in amount $1,507.00.

Q. Bought by the Western Rope?

A. It isn't shown.

Q. Was any other check purchased on that date in the sum of $1,507.00 by anybody?

A. No, sir.

Q. I hand you Trustee's Exhibit #13 and ask you if that is the original cashier's check from the records of the bank?

A. Yes, sir.

Mr. Kates: That is all.

(Witness excused.)

B. M. GESSEL, produced, sworn and examined at the time and place above mentioned, testified as follows:

Examination by Mr. de Meules.

Q. Your name is Ben Gessel?

A. Yes, sir.

Q. You were president of the Western Rope & Manufacturing Company?

A. Yes, sir.

Q. The Western Rope & Manufacturing Company was organized in about what year?

A. The Western Rope & Cordage Company, sometime in 1915.

Q. That was succeeded by the Western Rope & Manufacturing Company in 1917?

A. 1917, I think.

Q. You were president of the company and a member of the board of directors during all that period?

A. Yes, sir.

Q. Mrs. Leftwich became secretary-treasurer at the inception of the company, did she, or was that some time later?

A. I rather believe she became secretary-treasurer some time after the first.

Q. She was secretary-treasurer of the Western Rope & Manufacturing Company in the years 1918 and 1920?

A. Yes, sir, with the exception of a very short time when the Olsan Brothers were in the company, possibly sixty days.

Q. That was about when?

A. That was 1920.

Q. February and March, 1920?

A. I think it was.

Q. She was a director of the Western Rope & Mfg. Co., also?

A. Yes, sir.

Q. Now, during the fall of 1918 and the year 1919, and 1920, who had charge of the bookkeeping department of this company?

A. Mrs. Leftwich always had charge.

Q. To what extend did she have charge of the books and records of the company?

A. Well, she had absolute charge of them.

Q. Did you exercise any direct supervision or control of the books and records of the company so far as the bookkeeping was concerned? [fol. 42] A. No, I often would talk matters over with her, but not the bookkeeping.

Q. With whom was the actual work entrusted?

A. To her.

Q. Do you remember when this house was built on the Jenks road?

A. By Mrs. Leftwich's folks?

Q. Yes.

A. I remember when it was building.

Q. About when was that building commenced?

A. I don't remember the time.

Q. Just about?

A. I would say it was, I think, early in 1919.

Q. The late spring?

A. I rather think so.

Q. You owned a house in the City of Tulsa?

A. Yes, sir.

Q. Do you still own it?

A. No.

Q. When did you dispose of it?

A. Last year some time, i won't say exact dates because I don't recollect it.

Q. Did you build that house yourself?

A. No, sir.

Q. You bought it already constructed?

A. Yes, sir.

Q. You did, however, build a garage?

A. I remodeled the garage.

Q. And what else did you do?

A. I put a room on the house.

Q. Who did that work for you?

A. Mr. Blair did the work on the house and a man by the name of Zimmerman on the garage; and Mr. Zimmerman put a porte-cochere on the house.

Q. Then J. T. Blair added one room to the house?

A. Yes, sir.

Q. What was the cost?

A. I would say around $4,000.

Q. Now, when was that done?

A. I don't know just exactly—about three years ago.

Q. Was it done before the Chamberlain house was commenced or afterwards?

A. Why, it was done afterwards, to the best of my knowledge. The Zimmerman account was not on the house, only the porte-cochere.

Q. How was the work, done by Mr. Blair, paid for?

A. I think by check.

Q. By check of the Western Rope?

A. I think so, and charged to me.

Q. Who were those checks made payable to?

A. Mr. Blair.

Q. And charged to you on the books?
A. Yes, sir; I think I paid part personally.
Q. How did you pay Zimmerman?
A. Same way.
Q. Did you direct the payment of those amounts from time to time?
[fol. 43] A. I never directed any payments. When they came in they had instructions to pay them.
Q. Now, Mr. Gessel, for the work done by Mr. Blair, did you ever cause cashier's checks to be purchased and paid?
A. No, sir.
Q. Are you positive about that?
A. Yes, sir.
Q. For Zimmerman?
A. No, sir.
Q. The payments were always made direct to them by Western Rope & Manufacturing Company's checks?
A. And charged to my account.
Q. In which they respectively were the payees?
A. Yes, sir.
Q. Have you any means, Mr. Gessel, of fixing or ascertaining the date of the completion of the room to your house in the City of Tulsa?
A. I don't believe that I could do that without seeing Mr. Blair; possibly the work was done in the summer or along in the fall of the year.
Q. Now, wasn't it in the spring of 1920, a year ago last spring?
A. On the house? I think not; I think it was in the fall.
Q. 1920?
A. No, before that.
Q. Well, Mr. Blair can tell?
A. Yes, he can settle that.
Q. Now, you know where the land is on which the Chamberlain house was constructed on the Jenks road?
A. Yes.
Q. Do you know when that was purchased?
A. No.
Q. Dou you know how it was purchased?
A. No.
Q. From whom it was purchased?
A. I do not.
Q. Did you ever have any negotiations concerning the purchase of that land?
A. None, whatever.
Q. You say you don't know from whom it was purchased?
A. No, sir; I do not.
Q. Do you remember the time it was purchased?
A. No, I don't know when it was purchased.
Q. Who purchased the land in the north part of town on which the shops were located?
A. I made that deal with Mr. Eysenbach.

Q. When?

A. I don't remember the date; quite a little while ago, because the shop has been there a couple of years.

Q. Can't you fix the date of that at all, the year?

A. It runs in my mind the latter part of 1917 or early part of 1918. I could run it down.

Q. Well, the deed which you obtained to the property, the date on that deed would be the correct date on which you purchased it?

A. Yes, sir.

Q. Now, what other real estate did you buy outside of the stuff on which the shop was built?

[fol. 44] A. I bought a piece of property along the Katy track.

Q. Who did you buy that from?

A. I bought that through a real estate broker here.

Q. Who made you the deed?

A. I believe I bought that through a man named Fleetwood.

Q. You didn't buy it from Eysenbach?

A. No, sir, I never bought but one piece of property from him.

Q. Don't you know the property on which the house on the Jenks road was built was bought from Eysenbach?

A. I never heard it till today; it wasn't of interest to me.

Q. Were you ever out there while the house was being built?

A. I don't think while the house was being erected.

Q. You knew it was building?

A. Yes, sir.

Q. You knew Mrs. Chamberlain was building it?

A. Yes, sir.

Q. And that Mrs. Chamberlain was Mrs. Leftwich's mother at that time?

A. Yes, sir.

Q. Do you know whether any of the funds of the Western Rope & Manufacturing Company were used in the construction of the Chamberlain home on the Jenks road?

A. I do not.

Q. Did you ever authorize the issuance of any checks by the Western Rope & Manufacturing Company for money to be used in the construction of that house out there?

A. No, sir.

Q. Did the Western Rope & Manufacturing Company ever owe Mrs. Anna B. Chamberlain any money?

A. Not that ever I knew.

Q. Did you ever have any business relations—did the Western Rope & Manufacturing Company ever have any business relations with Anna B. Chamberlain?

A. To my knowledge, no. I might go further and say, on my return to Tulsa one time——

Q. When?

A. About the time the Western Rope & Manufacturing Company took over the Western Cordage Company, Mrs. Leftwich said to me, in my absence they had gotten into trouble in which she had

used some of her father's collateral to hold it off until collections came in to pay it. That is all I know about it. At that time I don't think I ever met Mr. Chamberlain.

Q. Mr. Gessel, if it should appear that the checks of the Western Rope & Manufacturing Company were made out in various cases to the American National Bank for cashier's checks in the name of Anna B. Chamberlain and delivered to Anna B. Chamberlain, what [fol. 45] would you say would be the occasion for such a transaction?

A. There would be none so far as the Western Rope & Manufacturing Company was concerned.

Q. Have you ever made any investigation as to whether the funds of the Western Rope were used in this building?

A. I never have.

Q. Should it appear in the evidence that checks of the Western Rope were issued payable to the American National Bank for the purchase of exchange in favor of or in the name of Anna B. Chamberlain and that those checks with which the exchange was purchased were charged to your private account, what would you say about that?

A. I never knew anything about it.

Q. Did you ever authorize that to be done?

A. No, sir.

Q. During the years 1918, 1919 and 1920, up to the time of bankruptcy, how familiar were you with the account books of the Western Rope & Manufacturing Company?

A. I was not familiar with them at any time.

Q. Well, you were president of the company, weren't you?

A. Yes, sir.

Q. Didn't you consider it your duty to be advised of the conditions of the books?

A. I would if I had time to be here; the greater part of my time I was away from here.

Q. I wish you would explain to the referee just how you operated or attempted to operate the Western Rope & Mfg. Company during the years 1918 and 1919 with reference to your personal attention and supervision of the affairs of the company. What did you do and what did Mrs. Leftwich do; how was the business managed; how much of the time during those years were you in Tulsa at the offices of the corporation?

A. Well, the way we run the business was this: I practically looked after everything outside the office. I did all the purchasing and looked after all the sales. I bought material all over the United States, personally superintended the buying of it and would be from New York to San Francisco looking after purchases during the shortage; and I spent not to exceed thirty per cent of the time in Tulsa; I would say a part of that was spent in the office. But I was with the salesman and in the shop and the office was left entirely to Mrs. Leftwich. I would go over the matters with her after I would get into Tulsa; at the end of the month I had her make me a statement of all checks received from customers, who from, and how

much, and those made out, to whom, and how much. The rest of the office I paid very little attention to that.

[fol. 46] Q. Well, in those years when you were in the office did you inspect the books yourself?

A. No, sir, never did that; I don't know anything about books.

Q. Then, as I understand, you would come in and call upon Mrs. Leftwich for reports as to the condition of business?

A. Yes, sir.

Q. Would she exhibit to you the original checks and vouchers?

A. No.

Q. She would say: this month we collected so much money from these people?

A. And showed it on the sheet.

Q. And she would say we have disbursed so much money in the aggregate?

A. Yes, sir.

Q. You wouldn't know what the individual amounts of the checks were?

A. No.

Q. Now, about your presonal account: did you ever examine that to see what you were being charged with from time to time?

A. You mean my personal account with the company?

Q. Yes.

A. I would always have that shown on my report.

Q. Would that be a detailed statement or balance of the account?

A. Balance of the account.

Q. This month you were credited with so much money and charged with so much money and that left you a balance of so much?

A. Yes.

Q. You wouldn't know what that was made up from?

A. No.

Q. So from your testimony am I correct that as to the office management, keeping of the books, all that was left to the immediate supervision of Mrs. Leftwich?

A. Other than the sales.

Q. Mrs. Leftwich, and sometimes referred to as Mrs. Gessel and Mrs. Agnes Gessel, are all one and the same person?

A. Yes, sir.

Q. I ask you to examine Trustee's Exhibit #14, the same being American National Bank cashier's check for $5,060, under date of April 30, 1919. Now, assuming it to be true that that item of exchange was purchased by the check of the Western Rope & Manufacturing Company and that that item of $5,060.00 was charged against you on your personal account, what would you have to say about that?

A. That wouldn't be right.

Q. Would you know anything about it?

A. No, sir.

Q. Did you ever have any transactions with Mr. Eysenbach personally and individually on April 30, 1919, involving the sum of $5,060.00?

A. Of that amount of money, no; no time.

[fol. 47] Q. By the way, what did you pay Eysenbach for the purchase of this factory site out here in 1917?

A. As I recollect, it was something around $2,600.00.

Q. Now, that was the only transaction you ever had with Eysenbach involving the purchase of real estate?

A. Yes, sir.

Q. Did you owe Eysenbach $5,060.00 on April 30, 1919?

A. No, sir.

Q. Or did the Western Rope & Manufacturing Company?

A. I don't think the Western Rope & Manufacturing Company ever had but one deal with Eysenbach; that was the shop property.

Q. Now, I have asked you about the Eysenbach item; I want you to examine Trustee's Exhibits 8, 9, 10, 11, 12 and 13; those respective exhibits have heretofore been identified in the record; two of them cashier's checks made out to J. T. Blair in July and November, 1919; three of them made out in April, August and August to A. B. Chamberlain; another one in favor of A. C. Leftwich. Now, assuming that each of those items were purchased by the check of the Western Rope & Manufacturing Company and each of them charged against your personal account, what would you have to say about that?

A. I would say that it was all wrong.

Q. When did you first discover that those items were charged against your personal account?

A. Last Monday.

Q. Is that true also of the Eysenbach check of $5,060.00?

A. Yes, sir.

Q. Now, Exhibits #8 and #9 were made payable to John T. Blair and by him endorsed. Were those paid to John T. Blair in payment for the construction of the room on your house in the City of Tulsa?

A. No, because this is July 7th.

Q. Yes.

A. Because there is too much time intervening.

Q. The gross amount of those is in excess of $5,500.00.

A. That is more money than the room cost.

Examination by Mr. Martin:

Q. Mr. Gessel, in 1919, up to November, were you the only stockholder of the Western Rope except some parties who held some nominal shares?

A. I think in September.

Q. September, 1919, you are not sure whether that was September or November?

A. I think September.

Q. Up to that time you were the only stockholder?

A. I think Mrs. Leftwich held a few shares of stock.

Q. But at any rate you and Mrs. Leftwich were the only stockholders up until Mr. Treft came in?

A. Absolutely.

Q. Your company was solvent and paying its debts regularly at that time?

A. Yes, we were paying our debts.

[fol. 48] Mr. Kates: I believe I will object on behalf of the trustee.

The Referee: The objection will be sustained.

Q. Mr. Gessel, you were familiar with the affairs of your company at that time that is its financial situation, were you not?

A. Yes.

Q. When did the company first become embarrassed and cease to pay its debts every month?

A. I don't remember the time; we had some trouble getting by for quite awhile on account of collections.

Q. At what time did your company discontinue active business?

A. After bankruptcy.

Q. At the time the bankruptcy petition was filed?

A. That is, I mean until this bankruptcy was applied for.

Q. Did you owe any of the debts that your company owed at the time your company went into bankruptcy in 1919?

A. Yes.

Q. What debts did you owe?

A. I couldn't say.

Q. Did you owe this firm of Hoover & Allison any money in 1919?

A. We owed Hoover & Allison all the time because we were monthly customers for a good many years.

Q. In 1920 you had an audit of your books made as made by Mr. Arnold, an accountant?

A. Yes, sir.

Q. At the time that audit was made did you ascertain whether you owed them or they owed you?

A. The audit showed that they were indebted to us, but the court disagreed with us.

Q. According to your understanding in 1920 Hoover & Allison owed you about how much money?

A. According to that audit I think something like an enormous sum.

Mr. de Meules: $187,000.

A. Something like that; I was going to say $125,000.

Q. Outside of that were there any other debts that your company owed when it went into bankruptcy that it owed in 1919?

A. Yes, I think there were a number.

Q. Can you tell who they were?

A. No, I can't enumerate them.

Q. Mr. Gessel, when were you married to Miss Leftwich?

A. November 30th.

Q. Of what year?

A. Last year.

Examination by Mr. de Meules:

Q. Mr. Gessel, your ledger showed, in 1920, your own books, that the Western Rope & Manufacturing Company owed Hoover & Allison about $43,000.00?

[fol. 49] A. Something like that. That was the ledger, but not the audit.

Q. You never did agree with that audit?

A. I don't think I should answer that.

Examination by Mr. Riddle:

Q. Hoover & Allison had a very expert auditor, didn't they?

A. Seemed to get everything he wanted.

Q. And made a good witness?

A. I think he made attorney, judge and everything else.

Q. During the time the Western Rope & Manufacturing Company was in business after it was organized you had a pretty large business?

A. Yes, sir.

Q. Business was increasing all the time?

A. Yes, sir.

Q. I will ask you to state whether you had a regularly organized office force—bookkeepers?

A. Yes, we had bookkeepers almost from the start.

Q. Kept increasing them along as business increased?

A. Yes, sir.

Q. What are the facts during the latter part of 1917 and 1918 about the changing of bookkeepers?

A. We had a great deal of trouble?

Q. About how often would they change?

A. I couldn't say that but we wouldn't any more than get a bunch of bookkeepers started until they would be taken away. I would say in a year or year and a half we changed five or six different times.

Q. About how many altogether were working in the office as bookkeepers, and other office force during 1917, 1918 and 1919?

A. I think we had four or five people.

Q. Now, as I understand, you were on the outside practically all the time and Mrs. Gessel had charge of the bookkeeping department?

A. She hired her own bookkeepers and handled her own system.

Q. To whom did the bookkeepers report?

A. To her.

Q. You say occasionally there would be a statement made to you?

A. I would always go to her.

Q. What bank did you do business with in 1918, 1919 and 1920?

A. We did business with the American National Bank, some with the Central National; I don't know whether we had closed out the Central National account before that time or not. We did business with the Central National and Exchange, but the greater portion through the American.

Q. You owed them money?

A. Yes, sir.

Q. Doing considerable business with them?

A. Yes, sir.

[fol. 50] Q. On your monthly statement a check made payable to the American National Bank wouldn't cause you to make any investigation?

A. No, because we were having practically all the material that was shipped in at that time was C. O. D.; come with bill-of-lading attached. We always asked as a favor to have every shipment through the American National and we also owed them money.

Q. The question was asked you awhile ago whether you made any investigation regarding this account of building this house by Mrs. Chamberlain; you said you did not. When was the first time it ever came to your knowledge any funds of the Western Rope & Manufacturing Company were used for that purpose?

A. It never came to my knowledge until Monday.

Q. Monday of this week?

A. Yes, sir.

Q. How did it happen to come to your knowledge then?

A. In talking with Mr. Kates; he offered to show me these things and I have always taken the stand that I would have to be shown. He showed me these cashier's checks and the checks that were made for them.

Q. The first time you had known the checks had been made in that manner and charged to your account?

A. Yes, sir.

Q. And went into the building, if it did go into the building?

A. If it did, yes.

Q. You had no knowledge before that?

A. No, sir.

Q. Now, did you ever have your books audited before they were audited by Hoover & Allison?

A. Yes, the books were audited first by a firm in Kansas City, I think Mendenhall & Wright, in 1917; then by Ligon, and by a man by the name of Bowden.

Q. What years?

A. 1917, 1918 and 1919, I believe.

Q. What would the audit mean to you?

A. I don't know anything about audits; I don't know anything about books.

Q. Wouldn't know whether they were kept correctly or not?

A. No, sir, my business has always been handling material and drilling wells and things of that kind.

Q. Now, in regard to these monthly statements, trial balances?

A. I don't refer to trial balances. I had Mrs. Leftwich make me a monthly report every month showing the number of checks and the amount and who from that the company received payments; also on the opposite page the amount that was paid out, to who, and how much. I wanted to keep in touch with who we were doing business with.

[fol. 51] Q. Did that indicate that checks were charged to your account personally?

A. No, sir.

Q. Of course there were no checks on those to your knowledge that were made payable to Mrs. Leftwich or Mrs. Chamberlain?

A. There would be checks to Mrs. Leftwich because she was getting her salary and she was also traveling.

Q. How much salary was she getting?

A. I think $350.00 a month.

Q. At the time these checks exhibited here you were doing business then, were you, with the American National Bank?

A. Yes, sir.

Q. Now, another purpose of that statement was to see in a general way about the condition the business was in?

A. Yes, sir, and the footing would show how much money we had received and how much we paid out.

Examination by Mr. de Meules:

Q. So that if the checks were made out to the American National Bank to buy cashier's checks all the statement would show would be check to American National Bank so much money; is that right?

A. Yes, sir.

Examination by Mr. Martin:

Q. Mr. Gessel, did you ever make any investigation any of those times of your standing with the company?

A. Well, I always got that.

Q. You got that every month?

A. Yes.

Q. So you would know what items had been charged to your account?

A. I would know what had been charged direct to me. I carried that account and another account with the company; one was the amount I took for my personal use and the other was traveling expenses and salary and it showed at the end of the month that I owed the company so much money.

Examination by Mr. de Meules:

Q. You spoke of your salary; what salary did you draw?

A. I don't remember the first year or two, but I don't believe for the first year or two I drew any regular salary. Then the latter part I drew $1,000 a month.

Q. That was never authorized by the board of directors?

A. No.

Q. Was Mrs. Leftwich's salary as secretary-treasurer authorized by the board of directors?

A. I don't think there was ever anything said.

Q. As a matter of fact, you know it wasn't?

A. Yes.

[fol. 52] Q. She was also a director?

A. Yes, sir.

Q. So were you?

A. Yes, sir.

Examination by Mr. Riddle:

Q. When you say it wasn't authorized by the board of directors, ou mean there was no formal by-law or resolution?
A. Yes, sir.
Q. Everybody connected with the business knew you were drawng that amount of money?
A. Yes, sir.
Q. Mr. Trefts and other directors?
A. Yes, sir.
Q. That was paid and charged to your account every month?
A. Yes, sir.
Q. And everybody concerned knew it?
A. Yes.
Q. No one objected to it?
A. No.

Examination by Mr. Mitchell:

Q. There was a contract entered into in April, 1920, between John . Trefts and Olson Brothers and the Western Rope & Manufacturing Company; do you remember that contract?
A. Yes, sir.
Q. Will you have that contract here tomorrow?
A. I think I can; I think Judge Linn has it.

Examination by Mr. Martin:

Q. At the time Mr. Trefts came in you were the sole stockholder outside of Mrs. Leftwich and you and Mrs. Leftwich and some other nominal stockholders were the directors, were you?
A. Yes.
Q. And you were substantially the sole stockholder of the corporation at that time?
A. Yes, sir.
Q. And of course you made no objection to your own salary?
A. No, sir.
Q. Nor to hers?
A. No, sir; paid everybody what I thought they were worth.

(Witness excused.)

And thereupon an adjournment was taken until nine o'clock A. M., September 15, 1921.

And thereafter the hearing was resumed at nine o'clock A. M., September 15, 1921, at the same place and the following proceedings were had:

J. J. PERRY, produced, sworn and examined at the time and place above mentioned, testified as follows:

Examination by Mr. Kates:

Q. State your name?
A. J. J. Perry.
[fol. 53] Q. What bank are you connected with?
A. Producers State Bank.
Q. What position do you hold?
A. Assistant cashier.
Q. How long have you been assistant cashier?
A. Since August, 1919.
Q. Is it part of your duties to keep the records of the individual checking accounts of the bank?
A. No, sir.
Q. Are those books in your custody and control?
A. Yes, sir.
Q. I will ask if you brought with you the ledger account of Anna B. Chamberlain for 1919 as shown by the books of the bank in your custody?
A. Yes, sir.
Q. Will you state the various entries showing deposits in that account as shown by your books?
A. The account was opened on June 25, 1919, with a deposit of $177.00, next deposits

July 5th	$293.29
July 18	80.75
July 29	183.75
Aug. 4	137.50
August 13	2,740.97
August 16	102.50
September 8	1,200.00
September 10	30.00
September 16	600.00
September 17	61.50
September 18	1,972.92
October 13	2,566.50

That is all the deposits.
Q. Will you state the dates and the amounts of the checks drawn on that account as shown by your books?
A. The first two checks are not dated on this ledger sheet.
Q. What is the amount of them?
A. But they are shown between the dates of June 25th and June 30th, $12.70 and $1.55.

The Referee: What year?
A. 1919.

June 30	$5.06
July 8	3.00

	5.00
July 7	268.29
July 8	2.00
July 11	2.50
—— —	2.09
July 12	5.00
July 14	10.00
July 15	2.65
July 19	3.00
[fol. 54] July 22	1.65
—— —	12.95
July 23	7.00
—— —	15.00
July 24	13.40
July 26	3.00
July 28	50.00
—— —	25.00
August 1	1.00
August 2	3.00
August 4	25.00
—— —	2.00
August 9	13.65
August 11	21.60
—— —	1.50
—— —	300.00
August 12	3.50
—— —	13.87
August 10	55.00
August 14	1.50
August 19	3.25
August 20	55.37
—— —	1.00
August 22	3.98
August 23	1,000.00
August 27	5.00
August 28	.67
—— —	672.28
September 5	5.15
September 6	5.00
September 8	1,500.00
September 9	1.70
September 12	1,200.00
September 16	56.10
September 19	11.25
September 20	1,600.00
September 23	200.00
September 24	2.25
September 26	10.00
September 27	28.85
September 29	1.10
October 1	2.35
October 3	

The next item is dated September 3rd for $2.00, but I am of the opinion it should have been October 3rd, because it follows in that line, an error in putting down the wrong month.

[fol. 55] October 6	2.00
October 9	1.25
—— —	4.55
—— —	2.00
October 10	2.50
October 13	1.60
October 14	1.00
—— —	2,000.00
—— —	1.59
October 15	20.92
October 16	2.40
October 17	136.50
—— —	1.00
October 29	2.32
November 1	1.95
November 4	1.20
—— —	15.00
November 6	2.35
—— —	2.03
November 10	3.50
—— —	50.50
—— —	60.00
November 12	2.25
—— —	7.20
November 14	8.75
December 2	66.59
December 5	23.00

Another item not dated between December 5th and 11th, $17.00.

December 11	17.00
December 12	7.20
December 13	99.00
December 15	3.00
December 20	6.76
December 22	3.00
December 23	9.50
—— —	42.22
—— —	18.00
—— —	7.00
December 24	10.00
December 26	35.00
January 1, 1920	50.66
May 1, 1920	35.00
May 13	102.63

That is all.

(Witness excused.)

[fol. 56] O. K. EYSENBACH, produced, sworn and examined at the time and place above mentioned, testified as follows:

Examination by Mr. Kates:

Q. State your name?
A. O. K. Eysenbach.
Q. Mr. Eysenbach, in the spring of 1919 did you have any business dealings with Agnes Gessel, then Agnes C. Leftwich, for the purchase of land owned by you?
A. Yes, sir.
Q. Where was that land?
A. In the southeast part of town, or rather south of town.
Q. On the Jenks road?
A. Leading to Jenks, yes, sir.
Q. Can you remember the description of that?
A. It is in section 19, 19-13, and I think it is the south half of the northwest quarter of the northwest quarter—it is the north half of the southwest of the northwest.
Q. How much land was included in that sale?
A. The sale was for five acres.

The Referee: That was section 19?

A. Township 19, range 13.
Q. Section 17?
A. No, section 19.
Q. With whom were you negotiating for the sale of that land—I will ask if the five acres wasn't in the southwest corner of lot 3, section 18, township 19, range 13?
A. Yes, sir, I guess it would be 18 instead of 19.
Q. With whom were the negotiations for the sale of that land carried on?
A. I didn't carry on the negotiations, directly; they were carried on through Mr. Blair.
Q. What Mr. Blair?
A. Joe Blair.
Q. Who, besides Mr. Blair, did you know in the transaction?
A. Mrs. Leftwich.
Q. Who paid you the money for that purchase?
A. I think Mrs. Leftwich paid me the money.
Q. In whose name was the title taken?
A. Mrs. Chamberlain, I think, is the name; it was her mother.
Q. Mr. Eysenbach, I hand you Trustee's Exhibit #14 and ask you if you recognize that?
A. Yes, sir, that looks like the check made out to me.
Q. That is a cashier's check of the American National Bank in the sum of $50.60?
A. Yes, sir, that is my endorsement.
Q. Dated April 30, 1919?
A. Yes, sir.
Q. Was that check given you in payment of this land by Mrs. Leftwich?

A. That is part of the payment.
Q. How was the balance of it paid to you?
A. My recollection is there was a check on the Union National Bank.
[fol. 57] Q. At the same time?
A. At the same time, yes, sir.
Q. How much was that check for?
A. I think the total consideration was $8,750.00.
Q. The balance was paid to you by check?
A. Yes, sir.
Q. Do you recall whether it was one check or two?
A. I wouldn't recall, but I think one.
Q. When was it paid to you?
A. I think at the same time, possibly the day before or day after.
Q. But it was about the same time of the $5,060.00 check?
A. Yes, sir.
Q. Mr. Blair would probably know more about the sale?
A. He would about the negotiations, but not about the payments.
Q. Have you any books to refresh your recollections on that?
A. Not a thing, no sir.
Q. Did you have any business relations with the Western Rope & Manufacturing Company during the year 1919?
A. Nothing of any consequence that I recall.
Q. Did you have any business relations that would result in the payment to you by the Western Rope & Manufacturing Company of the sum of $5,000 or more?
A. No, sir.
Q. What business relation did you have with the Western Rope that you can recall?
A. I sold them a piece of land where their factory is located in the northeast part of town.
Q. When was that?
A. I think that was about two years prior to this purchase.
Q. And you received payment for it at the time you sold it?
A. Yes, sir.
Q. How much did that sale amount to?
A. I couldn't tell you, but it wasn't over thirty-one or $3,500.00.
Q. Did the Western Rope ever buy any boilers from you?
A. No, sir, not that I know of.
Q. Did they ever buy any material from you?
A. No, sir, I don't think so.
Q. Did the Western Rope ever buy a carload of boilers from you?
A. No, sir, I never had a carload of boilers.
Q. You cashed that check for $5,060?
A. Yes, sir; I deposited it to my account.

Examination by Mr. Linn:

Q. Mr. Eysenbach, on or about the date of this cashier's check made to you for $5,060.00, did the Western Rope at that time or prior to that owe you any money?
A. No, sir.

[fol. 58] Q. Did Mr. B. M. Gessel at the dates of these checks owe you any money for any purpose?

A. No, sir.

(Witness excused.)

W. C. CRAIG, produced, sworn, and examined at the time and place above mentioned, testified as follows:

Examination by Mr. Mitchell:

Q. State your name?

A. W. C. Craig.

Q. Where do you live?

A. Xenia, Ohio.

Q. What is your business?

A. I am an auditor.

Q. By whom are you employed?

A. By the Hoover & Allison Company.

Q. Will you state in general just what your qualifications are as auditor and accountant?

A. Well, I practiced as an accountant in England from 1911 until 1914, and I am a C. P. A. of London, England.

Q. What is a C. P. A.?

A. Chartered Public Accountant.

Q. Chartered by whom?

A. By the British government.

Q. As a public accountant?

A. Yes.

Q. State what further qualifications you have as an accountant or as an auditor?

A. And I was in Western Canada practicing for eighteen months and since 1916 have been auditor for the Hoover & Allison Company, except while I was away during the war.

Q. And you are now engaged in that kind of work?

A. For this company.

Q. You have made an audit of the books of the Western Rope & Manufacturing Company, I believe?

A. Yes.

Q. Will you state the circumstances under which you were appointed to make that audit?

A. At a meeting of the creditors of this company on June 23rd, I think it was, the creditors asked that an audit be made, and an order was made by the court appointing me to do such work.

Q. And the work which you did was pursuant to an order of the court?

A. Yes.

Q. In the matter of the Western Rope & Manufacturing Company, bankrupt?

Q. Now, will you state what you did in connection with an ex-

amination of these books pursuant to this order which you have mentioned?

A. I commenced at the inception of the company in 1915 and made an examination of all available vouchers, cash books, general ledgers, journals, accounts receivable and accounts payable.

Q. Vouchers and invoices?

A. Vouchers and invoices.

Q. Did you examine the minute books of the corporation?

[fol. 59] A. I did.

Q. And you brought that examination down to the date of bankruptcy?

A. I did.

Q. May 25, 1921?

A. I did.

Q. How long did this work take you, Mr. Craig?

A. Just over nine weeks.

Q. Now, will you state in general what you found with regard to the solvency of the company in the year 1915? By solvency I mean the ability of the company as shown by the books to pay its debts with the assets which it owned; what was the situation in 1915?

A. 1915 they were perfectly solvent and making money.

Q. What was the situation in 1916?

A. The same condition.

Q. And 1917?

A. The same condition.

Q. And 1918?

A. 1918 they were solvent but from the records would appear to be embarrassed for ready money.

Q. When did that embarrassment become particularly acute?

A. Became most acute in May, 1919.

Q. State what happened in May, 1919, which has any particular bearing on this question of their financial difficulty.

A. In May, 1919, in making a loan from the American National Bank of $60,000.00 they had to pay $6,000.00 interest, which works out at the rate of forty per cent.

Q. In other words they paid interest at that time for a loan at the rate of forty per cent?

A. Yes, sir.

Q. Had there been any substantial withdrawals from the company during the year 1919 that were out of the ordinary course of business?

A. Yes, and prior to 1919 there had been money of this company advanced to the Western Motor Sales Company, presumably for the purpose of building a garage on the corner of Twelfth and Main. The real estate on which this building was located was bought by the Western Rope & Manufacturing Company.

Q. Have you a description of that real estate?

A. I have, yes.

Q. Will you give us that?

A. Lot 1 and north twenty-eight feet of lot 2, block 7. Friend-Gillettee Addition to the City of Tulsa.

Q. What other enterprises were a drain on the resources of this corporation?

A. The Western Manufacturing Company of Milwaukee and also the personal account of Mr. B. M. Gessel, president, shows that during the year——

Q. That is 1919?

[fol. 60] A. 1919; there was drawn out of the business approximately, all told, by some person and charged to his account approximately $100,000.00.

Q. In other words, there went out of the resources of the business to somebody a sum of substantially $100,000.00, and charges were made on the books of the company against B. M. Gessel's account to that extent?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. Coming down to September 30, 1919, what do you find the condition of the company to be at that time?

A. According to the books, on September 30, 1919, there was a total assets of $629,818.48, while their liabilities, exclusive of the stockholders, total $497,619.23, leaving a surplus, providing the assets realized one hundred cents on the dollar, $132,199.25. But the net result, taking into account the stockholders, showed a deficiency, or their capital impaired, to the extent of $17,800.00.

Q. And state whether or not there was included in this asset the Ben Gessel account?

A. Yes.

Q. Included as an asset?

A. As an asset.

Q. And what was the amount of that account at that time?

A. The amount in his account at that time was $101,989.50.

Q. And that is what the books of the corporation showed he owed to it on that date?

A. Yes.

Q. That is September 30, 1919?

A. Yes, sir.

Q. And was there any further item in the Gessel account or any further asset that had been put into the company and the amount charged to Gessel?

A. Yes, in the real estate account there appeared as an asset Mr. Gessel's house, valued at $5,500.00.

Q. Will you explain that transaction?

A. Under date of August 31, 1919, there was credited to Mr. Gessel's account $55,000.00, this being charged to real estate investment. On September 30, 1919, or October 1st, this house was deeded back to Mr. Gessel, his account debited and crediting the real estate investment.

Q. So that that was not a real asset available for the payments of the debts after that transfer?

A. No, sir.

Q. And the total amount of Mr. Gessel's account, including that item, was $156,989.50, if my addition is correct?

A. That is correct.

Q. And that is the correct amount as shown by the books?

A. Yes, sir.

Q. State whether or not there was included as an asset of the company at that time any of these other outside interests of this corporation?

[fol. 61] A. There was included an account carried as an account receivable the Gessel Motor Sales Company for $59,637.66.

Q. Now, returning to the question of proper reserve required by good business practice, were such reserves retained?

A. They were not.

Q. What particular reserves were not set up on the books?

A. The accounts receivable from customers are shown as being worth $184,078.64.

Q. What of their automobiles—did they carry any?

A. $23,849.55.

Q. Was there any reserve set up against those?

A. There was no adequate reserve; there had been a small reserve made prior to this date, but no proper system of annual depreciation had been made.

Q. And they had at the time $23,849.55 for automobiles?

A. Yes. It might be well to mention included in that would be items of this nature: cars would be purchased for $2,000.00 and sold for, say $800.00. The $1,200 difference obviously should have been written off as a loss.

Q. It still remained an asset, even after the car had been sold?

A. Had been sold.

Q. Were there any other items included in the assets of the corporation on that date about which you have any comments?

A. Yes, there was an asset of $16,000.00. This asset was created in March, 1919, by crediting the Milwaukee account and setting up this item six months after the date of this balance sheet, that is, March, 1920. This asset was written off as worthless without any explanation of any kind.

Q. What was the item of furniture and fixtures?

A. Furniture and fixtures were on the books at actual cost, $6,366.28, but no reserve had been made for depreciation, which is the usual course.

Q. Practically always done?

A. It is always done; in fact, it is approved by the income tax authorities. Then there was an asset appearing of $15,000.00 for patents and flasks. This item would appear to represent the value of patents sent to Tulsa from the Milwaukee branch, but there is no evidence to show if that cost $15,000 or $1,500.00, and in any event things of that nature are only valuable so long as they are being used and heavy depreciation should be written off for items of this nature.

Q. Taking into consideration these items about which you have testified, what would you say as to the solvency of the company on September 30, 1919?

A. I would say that it was insolvent.

Q. From your examination of the books from that date down [fol. 62] to bankruptcy, would you say it was ever solvent after that date?

A. Never after that date.

Q. Turn now to the account of the president of the company, Ben Gessel, and beginning at the organization of the corporation and its predecessor, the Western Rope & Cordage Company, and tell us what charges have been made to that account from the beginning. I suggest you divide your testimony with respect to the periods that are natural as fixed by certain specific large charges.

A. When the Western Rope & Cordage Company was organized in March, 1915, there was an amount standing to the debit of Mr. Gessel at that date of $2,078.15.

Q. In other words, at the beginning he owed the corporation $2,078.15, according to the books?

A. Yes, sir. Then from March, 1915, to December 31, 1916, there was withdrawn by him or by some other person and charged to his account——

Q. On the books of the company?

A. On the books of the company, a total of $58,752.60.

Q. So that on December 31, 1816, there had been charged to his account, either withdrawn by him or somebody else, $58,752.60?

A. Correct. Then from January 1, 1917, to September 30, 1917, the date of the formation of the Western Rope & Manufacturing Company——

Q. That is the date of the formation of the present corporation?

A. Yes, sir.

Q. Which took over the business of the old company, taking its assets and assuming its liabilities?

A. Yes. There was withdrawn and charged to Mr. Gessel's account a total of $34,147.74.

Q. All right, take the next period.

A. From October 1, 1917, to September 30, 1919, the approximate date on which Mr. Trefts became interested in the company, there was withdrawn by Mr. Gessel, or by some other party and charged to his account, a total of $329,442.42.

Q. All right; take the next period.

A. From October 1, 1919, to March 31, 1920, there was withdrawn $56,278.79. Then from April 1, 1920, up to the date of bankruptcy, May 25th, I think it is 1921, there was charged to his account $31,444.98.

Q. Then at the time of the withdrawals and charges to his account the assets of the corporation were reduced by these various amounts?

A. They were.

Q. What are the total withdrawals from the date of the organization of the company?

A. The total withdrawals charged to Mr. Gessel's account is $510,066.53.

[fol. 63] Q. In addition to that, do you find Mr. Gessel drew any salary besides these amounts?

A. Yes, from October 1, 1917, to January, 1921, Mr. Gessel withdrew, and there was charged as an expense of the business, $35,993.00.

Q. This is in addition to any charges included in the $510,066.53?

A. Yes.

Q. Did that $510,066.53 include some salary?

A. Did, prior to October 1st.

Q. In addition to the $510,000 and salary, did Mr. Gessel withdraw any other funds from this corporation?

A. Yes, from March, 1915, to May, 1921, there were charges in general expense account totalling $24,874.38, representing traveling expenses of Mr. Gessel, but for which there was not always vouchers filed to show any detail, just a lump sum when Mr. Gessel went away.

Q. Was there any other sum that you find in the general expense account which was withdrawn by Mr. Gessel?

A. Not in general expense, but under the head of "Packard Car Expense," from July, 1919, to May, 1921, the company paid out $2,816.32.

Q. Were those automobiles that were included in the automobile account?

A. No, with one exception; there was one Packard.

Q. These were automobiles which presumably did not belong to the company?

A. No, but were probably used to some extent on company business.

Q. Any indication as to where the money came from with which those automobiles were purchased?

A. In some instances they were purchased by the company, but charged to Mr. Gessel.

Q. Now, Mr. Craig, will you take up the credit side of Mr. Gessel's account and trace it from the organization of the company down to the date of bankruptcy, giving the aggregate items for each of the periods for which you have given the charges? The first of those periods is from March 1915, to December, 1916.

A. There was credited into Mr. Gessel's account a total of $22,954.82, comprising cash, and also his salary, which at that time was credited to his account.

Q. What was his salary back at that time?

A. Apparently it was $750.00 a month. I am not positive.

Q. You have testified he drew out during that period $58,000.00, and you now testify that he paid in cash and there was credited to him on account of salary $22,954.82. I will ask you to state how the difference or balance was handled on December 30, 1916, if you know?

[fol. 64] A. The balance of $35,797.78 was disposed of by crediting Mr. Gessel's account and charging the dividend account although there is no authority so far as I could find in the minutes for this dividend being declared.

Q. The net result of that action was simply to wipe off the balance due by Mr. Gessel to the corporation?

A. That is correct.

Q. The next period?

A. The next period from January 1, 1917, to September 30, 1917, there was paid in and credited to his account $2,000.

Q. And what other credits were made to his account at that time?

A. At that time there was a credit placed to Mr. Gessel's account for $4,500.00.

Q. Will you explain that transaction?

A. This represented the proceeds of the sale of some real estate located at Block 9, Abdoe Addition.

Q. Who owned that real estate?

A. That real estate was originally purchased for $2,100, $1,000 of which was—the total amount was paid by the Company, but $1,000 of this $2,100 was retained as an investment of the company and $1,100.00 was charged to Mr. Gessel's account.

Q. And then when they sold the property they credited Mr. Gessel's account with the full $4,500?

A. Originally it was credited to the real estate account, and later transferred to Mr. Gessel's account.

Q. As a credit?

A. Yes, sir.

Q. So Mr. Gessel's account got the benefit of that $4,500.00?

A. Exactly.

Q. Taking into consideration the cash payment and even allowing the $4,500.00 what is the balance due the company by Mr. Gessel on September 30, 1917?

A. $27,647.74.

Q. What disposition was made of that item?

A. This item was written off as uncollectible.

Q. Charged off as a bad debt?

A. Yes, sir.

Q. And that was on September 30, 1917?

A. Yes, sir.

Q. And that sum has never been paid to the corporation?

A. Not so far as the books show.

Q. The next period, October 1, 1917, to September 30, 1919?

A. Credits in Mr. Gessel's account during that period total $134,598.37. Included in this is the $55,000.00 representing the value of his home.

Q. In other words, included in that the $55,000.00 for the house?

A. Yes, sir.

Q. Was that property conveyed to the corporation and the deed recorded?

[fol. 65] A. In the search that I had made of the record it does not show that deed as having been recorded.

Q. So that, so far as the real estate records are concerned, there was never any conveyance of this house to the company, nor by the company back to Mr. Gessel?

A. No.

Q. But included in the $134,598.37 paid in or credited to Mr. Gessel was the value of that house at $55,000.00?

A. Yes.

Q. What other tems were included in that $134,598.37?

A. There were items of cash.

Q. Is there a salary adjustment in that?

A. Not in that item, but in addition to that.

Q. This item of $134,598.37 includes cash and other items that were properly credited?

A. Yes, sir.

Q. In addition to that sum, what other credits or other sums were credited to his account during that period from October 1, 1917, to September 30, 1919, a period of two years?

A. There were two salary adjustments.

Q. State what those adjustments were?

A. One made on December 31, 1917, for $6,250.00, and then—they covered adjustments from January 1, 1917, to September 30, 1917.

Q. And how much increase in salary—you mean the credit was taken at the end of the period back?

A. Back nine months.

Q. That amounted to how much increase on per annum basis?

A. The entry shows the adjustment was made on a basis of six months at $12,000.00 a year, and three months at $25,000.00 a year, which would mean a total increase of $12,250.00, but there had been paid and charged to general expense $6,000.00, leaving due $6,250.00 to be credited to his account.

Q. And what is the date of that credit?

A. December 31, 1917, but relating back to the period ending September 30, 1917. Then on December 31, 1917, there was a salary adjustment made to cover the period from October 1, 1917, to December 31, 1917, for three months at $25,000, making $6,250.00, and there had been paid of this charge and charged to general expense $3,000.00, leaving a balance of $3,250.00 credited to Mr. Gessel's account.

Q. Now, in addition to these items that have been mentioned, $134,598.37, which was credited on account of cash and other items, and the house and the salary adjustment, what other credits were made during that period, were made for that period—any commissions paid to Mr. Gessel?

A. Yes, I was just looking through the detail of that. On December 31, 1917, there was credited to Mr. Gessel's account commissions at the rate of 3% on the sales from January 1, 1917, to September 30, 1917, amounting to $23,493.75.

[fol. 66] Q. In other words, in addition to substantial salary increases, as shown by these adjustments, Mr. Gessel was paid a commission on the net sales of the corporation amounting to $28,354.00?

A. The first item I mentioned is up to September 30, 1917; then from October 1, 1917, to December 31, 1917, there was a similar entry at the rate of three per cent, making a credit of $4,860.80.

Q. So that the total is the same as you have mentioned?

A. Total credit for commissions is $28,354.55.

Q. And no papers anywhere in the files to indicate that there was any authority

A. No.

Q. Now, the total amount of those credits for this period from October 1, 1917, to September 30, 1919, is how much?

A. The total credit——

Q. $172,452.92. Well, there was left how much balance?

A. $156,989.50.

Q. Will you state what disposition was made of this balance on September 30, 1919, which was the date at which you have testified this company was insolvent?

A. This item was disposed of by crediting Mr. Gessel's account with this amount and creating a good will account of $156,989.50.

Q. In other words, this debt due from Mr. Gessel to the corporation on that date was wiped out without the company receiving anything of value for it?

A. Correct.

Q. And up to that date it had been carried as an asset of the corporation?

A. Yes, sir.

Q. Is there any indication of what good will, what item of value there was that came to the corporation for doing this?

A. There is nothing to show that the company profited in any way.

Q. The net result was to wipe off the debt of Mr. Gessel?

A. Yes, sir.

Q. And when that was done, what was done with the house?

A. The house is included and was written off.

Q. And presumably Mr. Gessel got it back?

A. Presumably so.

Q. They gave Mr. Gessel the house?

A. Gave it right back.

Q. And that amount was $156,989.50

A. Correct.

Q. And the date was September 30, 1919. This transaction just left the corporation $156,989.50 less than it had before?

A. Exactly.

Q. Now, the next period is from October 1, 1919, the end of the period about which you have testified, to March 31, 1920. I will [fol. 67] ask you to tell how much was paid in or credited to Mr. Gessel's account during that period?

A. $42,211.28.

Q. And he had received, during that period, how much?

A. $56,278.79.

Q. Leaving a balance for that period?

A. $14,067.51.

Q. That is a debit item that shows for that period Mr. Gessel, for this new period, was indebted to the company $14,067.51?

A. Yes, sir.

Q. What disposition was made of that item?

A. That was written off by journal entry, shows charged off to loss and gain or surplus.

Q. In other words, that was a credit of the company against Mr. Gessel that was marked off?

A. Yes, sir.

Q. And it reduced the assets of the corporation to that amount?

A. Yes, sir.

Q. And they got nothing?

A. No, sir.

Mr. Martin: When was that entry made?

A. March, 1920.

Q. Then the next period was from April 1, 1920, to May 25, 1921, the date of bankruptcy. I will ask you to tell how much the amount is credited to the account or paid in by Mr. Gessel during that period?

A. There was a total of $202,112.49.

Q. And that included what?

A. That included an item of April 30, 1920, of $130,000.

Q. Was there anything to indicate what that was?

A. From the books it would appear that this item was part of the proceeds of the sale of the Gessel Oil Corporation. This money, according to the books, was used to take up paper of the company and of the customers of the company which had been discounted at the American National Bank and their successors insisted that this paper be paid up.

Q. And what other item is included in that sum of $202,112.49?

A. On April 8th there was a credit to Mr. Gessel's account of $20,000.00. The cash book entry shows as having been received from John C. Trefts.

Q. And what other item?

A. On July 31st, 1920, there is a credit of $8,500.00 for moneys paid on Milwaukee account. This entry is made through the journal and is marked "By instructions of A. C. Leftwich."

Q. Who is A. C. Leftwich?

A. I presume it is Mrs. A. C. Leftwich.

Q. Mrs. Gessel?

A. Mrs. Gessel.

Q. Is there anything to show why that was made?

A. There is no voucher or inventory of any kind.

Q. What other items are included?

[fol. 68] A. On July 31st there is a credit of $2,000.00 which is charged to Olsan Brothers. It is not clear just why this entry was made, but Miss Howard, the bookkeeper, tells me it represented money that was supposed to have been taken out of Mr. Gessel's account and applied by Olsans for their own use.

Q. Is there any indication the Western Rope got the benefit?

A. So far as I can find there was no disbursement.

Q. Any further items?

A. On January 31, 1921, there is a credit of $5,285.00, representing money presumed to have been paid by Mr. Gessel to close the

Milwaukee debt. I believe from a statement that I saw that this item is absolutely a correct entry.

Q. Any further items included in that credit?

A. On May 1, 1921, there is credited to Mr. Gessel an item of $6,000. This item represents commissions paid on a loan from the Union National Bank. This loan was made, I believe, on the Gessel Oil Corporation's property and was deducted from the face of the loan when the proceeds were turned over.

Q. Just what do you mean by that?

A. I mean, instead of them receiving $60,000.00, they received $54,000.00.

Q. That is the amount the Union National Bank charged for interest in that period, I suppose?

A. That is right.

Q. What other item is included?

A. On May 21, 1921, there is credited in Mr. Gessel's account $20,776.86. This credit covers a check stated by Mr. Gessel to me to have been given to Oslan Brothers for deposit to the credit of the Western Rope & Manufacturing Company's account in the American National Bank, but retained by Olsans for their personal use. An investigation of the books and the check show that it was a Union National Bank cashier's check for $12,293.00, payable to the Gessel Oil Corporation, bearing the date, March 30, 1920, a year prior to this time, and is endorsed, Gessel Oil Corporation, by B. M. Gessel, President, and cleared through the American National Bank on March 31, 1920. There is nothing to show why this entry should be in the books of the Western Rope & Manufacturing Company, at all.

Q. Four days before the bankruptcy?

A. Yes, sir, and a year after the transaction took place. There is no mention of the Western Rope & Manufacturing Company on the check, or connected with it in any way, so far as I could tell.

Q. And the Western Rope & Manufacturing company did not get any benefit?

[fol. 69] A. They did not. Mr. Gessel himself told me that they did not.

Q. Then, including all of these doubtful credits, as outlined, there would be a book balance due Mr. Gessel of how much?

A. $170,667.51.

Q. Now, Mr. Crain, eliminating these fictitious credits, credits which brought nothing of value to the corporation, what would you say—would you say that this company was indebted to Mr. Gessel in any sum on April 6th or April 26th, 1920?

A. No.

Q. Going back only to the date of the insolvency, that is the date this company became insolvent, September 20, 1919, what would you say about the situation at that date; would you say that this company—only eliminating fictitious items since then giving Mr. Gessel credit for everything prior to and bringing it down to April

6th and 26th, 1920, what would you say about the indebtedness of the corporation to Mr. Gessel?

A. I would say he owed the company.

Q. The company didn't owe him?

A. No.

Q. On both of those theories, I will ask you to tell how much Mr. Gessel owed the corporation on April 6th and April 26th, 1920, first beginning with the date of the organization of the corporation and bringing it down to that date, and second, beginning with September 20, 1919.

A. Well, I haven't got it to April, without some work. I have it to November 30, 1920.

Q. Well, what was it, November 30, 1920?

A. I think November 29th was the date of the mortgage.

Q. That is the date of the mortgage to Mr. Gessel. Will you explain what that is?

A. Just to go back a little; these notes mentioned do not show on the company's books at any place. Two notes are described in the mortgage. They were not shown on the books; if they had been, Mr. Gessel's account would have been automatically closed.

Q. And that does not occur on the books of the company?

A. No.

Q. In other words, this book balance, including these various fictitious items of $170,000, would have been closed out on the books of the company if these notes for $170,000 had been entered on the books?

A. Exactly.

Q. But that was not done?

A. I did not know of these notes until just a few days ago. All I knew was the mortgage.

Q. There is nothing in the books to indicate the date of these notes?

A. No, nothing.

Q. And you have no information as to the date?

A. None at all.

[fol. 70] Q. What is the date of the mortgage which purports to secure these alleged notes?

A. November 30, 1920.

Q. November 30, 1920, is the date this mortgage was acknowledged and filed for record in this county—acknowledged on that date. Then on that date will you state whether or not the corporation, the Western Rope & Manufacturing Company, was indebted to Ben Gessel, eliminating these fictitious items or entries in the books which brought no assets to the corporation?

A. It is not.

Q. Then, how much did Mr. Gessel owe the corporation on that date, November 30, 1920, taking into consideration payments made to him from the beginning of the company and eliminating these fictitious entries?

A. $308,958.99.

Q. In other words, instead of the company being indebted to him for $170,000.00, he owed the company over $300,000.00?

A. Correct.

Q. That is from the books?

A. Correct.

Q. From September 30, 1919, taking the withdrawals from that date and eliminating these fictitious charges which brought no—fictitious credits which brought no credit to the corporation, what did Mr. Gessel owe the corporation figuring it on that basis alone and giving him the benefit of the fictitious credits made prior to September?

A. $183,051.94.

Q. So, giving him the benefit of everything he got out of this corporation prior to September 30, 1919, and only eliminating these fictitious charges from that date on instead of the company owing him $170,000 on that date, he owed the company over $180,000; is that correct?

A. Correct.

Q. Mr. Craig, will you turn to the Agnes Leftwich Gessel account and state what the books show the total charges against that account to be?

A. The total charges as shown by the books, $23,083.64.

Q. And the total credits against that account?

A. $20,406.29.

Q. That leaves a balance due the company on that account of $2,677.35?

A. Correct.

Q. Is there included in that the credit on account of a note of the Turman Oil Company?

A. Not a credit note, a payment in cash by check of $2,426.27.

Q. Which should be added to her account making it the total of the two sums mentioned, or about $5,000?

A. Correct.

Q. Then she owes at least how much?

A. $5,103.62.

Q. As shown by the books of the company?

A. Yes, sir.

Q. Now, there were salary adjustments from time to time?

A. I think two or three.

Q. How much were those adjustments?

A. Three items totaling $2,600.00.

[fol. 71] Q. Take up the real estate account. In the real estate account of the company there is included, Manufacturing Department Real Estate; have you any comment to make on that item, Mr. Craig?

A. The books indicate that this property cost—this property was purchased during the period from August to November, 1917, and cost $3,022.50.

Q. What is the description of that property?

A. Beginning on the east line of the northwest quarter of the southeast quarter of section 31, township 20 north, range 13 east,

such point being 325½ feet north of the intersection of said east line with the north line of the right-of-way of the St. Louis & San Francisco Railway Company, and running thence north 723.9 feet to the northeast corner of said northwest quarter of the southeast quarter; thence west 265 feet; thence south 725.4 feet; thence east 265 feet to place of beginning. Being 4.41 acres, more or less.

Q. That is Tulsa County, Oklahoma?

A. I can't tell you. The title is in the name of Mr. Gessel.

Q. That is the property on which the works are erected?

A. Yes.

Q. And it is now in the possession of the trustee?

A. Yes. There was a deed given by Mr. Gessel to the Tulsa & Santa Fe Railroad for right-of-way on May 9, 1918, filed June 29, 1918. This property cost $3,022.50, but after September 30, 1919, about October 1st, it was appreciated on the books to the extent of $10,000.00.

Q. Arbitrarily raised the price $10,000.00?

A. Yes, sir.

Q. That was in addition to buildings put on the property?

A. Well, the buildings were charged to building accounts.

Q. Anything further with respect to that property?

A. No.

Q. What about the Baltimore Street property?

A. The Baltimore Street property, lot 4, block 1, Cody Addition, City of Tulsa, was apparently purchased through Russell & Abbott, in December, 1917, and the records show this property was sold for a consideration of $4,500.00, but the real estate account of the company is only credited with $1,500.00, leaving an unexplained balance of $3,000.00 which appears at the date of bankruptcy as an asset of the company.

Q. To whom was this property deeded when it was sold?

A. Deeded from the Western Rope to G. B. Stotts.

Q. The title then was in the corporation?

A. Yes, sir.

Q. Does Mr. Stotts appear in any of your investigation-?

A. I believe in the case of Mr. Gessel's residence; his residence was purchased from Stotts.

Q. What is the date of the sale of the Baltimore property?

A. August 9, 1918.

[fol. 72] Q. And what is the date of the purchase of the residence from Mr. Stotts?

A. August 5, 1918.

Q. Three days earlier?

A. Yes.

Q. Explain the Drumright property.

A. These small items should have been written off. The properties were sold and this was the balance left as a loss.

Q. They were assets carried on the books which had no value, whatever?

A. No, sir.

Q. The property had been disposed of?

A. Yes, sir.

Q. What about the Augusta, Kansas, property?

A. That, I believe, was a warehouse that was sold, but the proceeds of the sale were credited to general expense, which, of course, left an asset which was of no value.

Mr. West: In other words, it looked from the books as though they still owned it?

A. Yes, sir.

Q. What about the Tulsa warehouse site?

A. That property is in block 9, Abdoe Addition. That was deeded from F. B. Ingram to B. M. Gessel, the consideration being $2,100.00. $1,000 of this $2,100 was carried as an asset of the company and the balance of $1,100.00 charged to Mr. Gessel's account.

Q. This is the property which you testified to in connection with your examination of Mr. Gessel's account?

A. Yes, sir; this property was sold to the Producers Supply Company for a consideration of $4,500.00 in August, 1917; the proceeds of the sale were credited originally to the real estate account, but still there is a $700.00 asset appearing and that is valueless.

Q. What about the South Frisco property?

A. This property appears to have been given as part of the consideration for the sale of the Gessler Motor Sales Company to F. M. Rodolf. The consideration for the sale of this company was, I understand, $57,500.00. Part of this was paid in cash and the balance in this property, lots 7 and 8, block 1, Lindsey Addition, for a consideration of $15,000. This property shows on the records to have been deeded to A. C. Leftwich, not to the Gessel Motor Sales Company or to the Western Rope & Manufacturing Company. Then on February 23, 1920, there was a mortgage given by A. C. Leftwich to F. E. Stephens for $7,500.00. The proceeds of this mortgage were turned in to the Western Rope & Manufacturing Company, but credited to the Gessel Motor Sales Company account instead of the real estate account, because prior to this an entry had been made in the Western Rope & Manufacturing Company account taking credit for $15,000 in the real estate investments, the full value of the property. The effect of this would be to leave an asset on the books of the [fol. 73] company of $9,000.00 in real estate which was worthless—had no existence, in fact. And then this property was sold for $16,000.00, the terms to be $500.00 cash paid on the date of the contract, $1,500 to be paid within fifteen days and the balance at $1,000 per month. The payment of the $500 was, I believe from the records, turned in to the Western Rope & Manufacturing Company, but I do not trace the $1,500.00 that was to be paid within the next ten days. Then this property was assigned to Farrer & Trefts on November 30, 1920.

Q. In whose name did this property stand?

A. Originally in the name of Mrs. Leftwich.

Q. So she would have to convey the property at the time it was sold?

A. No, it was deeded from Mrs. Leftwich to Western Rope & Manufacturing Company on January 31, 1920.

Q. After the loan was made?

A. No, before the loan. The deed was not recorded until April 9th after the loan.

Q. The loan was on there when the deed was recorded?

A. Yes, sir.

Q. What is the description?

A. Lots 7 and 8, block 1.

Q. What about the Zimmerman property?

A. This property is lot 7, block 2, Barton Addition, Tulsa, Oklahoma, and was purchased in 1918 in the month of September from a man by the name of Zimmerman. It was deeded to the Western Rope & Manufacturing Company and I believe on this was erected, or there was moved to this property, a small house. And then the property was deeded by the Western Rope & Manufacturing Company to Farrer & Trefts on November 23, 1920, for $6,500.00, but the deed was not recorded until April 15, 1921. This credit balance should go to surplus.

Q. That property was deeded to Farrer & Trefts?

A. The deed was recorded April 15, 1921.

Q. Is there anything else in the real estate account now that requires explanation? You have already explained the B. M. Gessel residence in connection with his account.

A. Yes, there was property located in Block 1, Terrace Drive Addition. This property was deeded on August 3, 1918, to A. C. Leftwich by the Terrace Drive Company for a consideration of $3,500.00. Then this property was in turn purchased by the Western Rope & Manufacturing Company from Mrs. Leftwich for a like amount, $3,500.00 but it doesn't show that the property was ever recorded in the name of Western Rope & Manufacturing Company. Then on February 9, 1920, there was a deed recorded from A. C. Leftwich to S. W. Mitchell and filed on February 20, 1920, for a consideration of $5,000.00. This amount of $5,000.00 was credited to the real [fol. 74] estate account and charged to B. M. Gessel's account, indicating on the face of it or from the books that Mr. Gessel received the proceeds of that property.

Q. Mrs. Gessel received the proceeds of that property?

A. It indicates that Mr. Gessel received it.

Q. Mr. Craig, you have tabulated the result of your very exhaustive examination of these books in the form of a report, have you not?

A. Yes.

Q. Have you a copy of that report?

A. The original is in the hands of Mr. Kates; this is an exact copy.

Mr. Mitchell: If the Referee please, I desire to have this marked as an exhibit for the use of the Referee in this matter.

(Marked Trustee's Exhibit #15.)

Whereupon an adjournment was taken for the noon hour and the hearing having been resumed at 1:30 P. M., the following proceedings were had:

Examination of the witness Craig by Mr. Mitchell continued:

Q. Mr. Craig, I hand you this book and I will ask you to state what that is?

A. This is a cash book of the Western Rope & Manufacturing Company as produced to me, covering the period from December 1, 1917, to October 12, 1918.

Mr. Mitchell: I would like to have this marked Trustee's Exhibit #16.

Q. I hand you this book and I will ask you to tell what that is?

A. This is cash book of the Western Rope & Cordage Company, as produced to me, covering a period from November, 1916, to September, 1917.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #17, and offer it in evidence.

Q. I will ask you what book this is?

A. This is a cash book of the Western Rope & Manufacturing Company from October 10, 1918, to April, 1921.

Mr. Mitchell: I would like to have this marked Trustee's Exhibit #18, and I offer this exhibit in evidence.

Q. Mr. Craig, what is this book?

A. This is the cash book of the Manufacturing Department, as produced to me, covering the period from May, 1919, to July 1920.

Mr. Mitchell: I would like to have this marked Trustee's Exhibit #19, and I offer this exhibit in evidence.

[fol. 75] Q. What is this book, Mr. Craig?

A. Cash book of the Manufacturing Department, produced to me, covering the period from August, 1920, to February, 1921.

Mr. Mitchell: I would like to have that marked Trustee's Exhibit #20, and offer this exhibit in evidence.

Q. What is this book, Mr. Craig?

A. This is a book produced to me as the journal of the Western Rope & Cordage Company, covering the period from March, 1915, to March, 1918, Western Rope & Cordage and Western Rope & Mfg. Co.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #21, and I offer it in evidence.

Q. What is this book, Mr. Craig?

A. This is journal from January, 1918, to September, 1919.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #22, and I offer it in evidence.

Q. What is this book, Mr. Craig?

A. This is journal from October, 1919, to March, 1921.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #23, and I offer it in evidence.

Q. What is this book Mr. Craig?
A. This is journal from March, 1921, up to May, 1921.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit # 24, and I offer it in evidence.

Q. What is this book, Mr. Craig?
A. This is the journal of the Manufacturing Department from May, 1919, to May, 1921.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #25, and I offer it in evidence.

Q. What is this book, Mr. Craig?
A. This is produced to me as the general ledger of the Sales Department of the Western Rope & Cordage and Western Rope and Manufacturing Department from the date of the company, 1915, to May, 1921.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #26, and I offer it in evidence.

Q. What is this book, Mr. Craig?
A. This is the general ledger of the Manufacturing Department from May, 1919, to May, 1921.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #27, and I offer it in evidence.

Q. What is this book, Mr. Craig?
[fol. 76] A. This is the Accounts Receivable and Accounts Payable ledger, as produced to me, of the Western Rope & Cordage and Western Rope & Mfg. Co.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #28, and I offer it in evidence.

Q. What is this book?
A. This book is a book handed to me as the minute book of the Western Rope & Manufacturing Company.

Mr. Mitchell: I would like to have this book marked Trustee's Exhibit #29.

Mr. Martin: Let me examine Mr. Craig?

Mr. Mitchell: Representing whom?

Mr. Martin: Well, I have a motion pending here directed to the jurisdiction. It hasn't yet been presented, and until it is ruled upon I don't know whether Mrs. Gessel is a party to this proceeding or not, but subject to the court's ruling upon that motion, I ask to examine the witness for Mrs. Gessel.

Mr. Mitchell: I take it, if the court please, Mr. Martin has entered his appearance and there is no objection to his examining the witness. We can place our own construction on it.

Mr. Martin: I have no objection to your doing so.

Mr. Mitchell: Mr. Martin, Mrs. Gessel has been served in the bankruptcy proceeding.

Mr. Martin: She has been served and has appeared specially and appears and asks to have it set aside.

Examination by Mr. Martin:

Q. The source from which you have derived your testimony are the books that have been introduced here in evidence?

A. Correct.

Q. Have you resorted to any other sources except these books?

A. Only to resources which an auditor would take naturally in concurrence with his work?

Q. What are those resources?

A. Well, for instance, I have searched—had the search of the records of the real estate.

Q. You have done that, and have you considered any other sources except that?

A. Well, I have had assisting me Miss Howard, who was in the employ of the Western Rope & Mfg. Co.

Q. And you have taken some of her statements?

A. No, not aside from the books; I asked her different times had [fol. 77] she information or could she show any information in the files regarding entries on the books.

Q. Then you have had some conversation with Mr. Gessel?

A. I saw him the night he left for Mexico after the meeting and I did not see him again until yesterday.

Q. Have you included in your source of information the stock books of these two companies, the Cordage and Western Rope & Mfg. Co.?

A. The certificate books?

Q. Yes.

A. I never saw them.

Q. You are not advised who the stockholders are?

A. Not beyond what the minutes show.

Q. Did you find a record of who the stockholders were in the minutes?

A. I believe in the Western Rope & Cordage Company there is set out the original incorporators and later when the company was sold or taken over by the Manufacturing Company I believe in there there is a showing who the stockholders were.

Q. Mr. Gessel and Mrs. Gessel were the only stockholders, were they?

A. No, one time there was a Mr. Bradley.

Q. Held one share of stock?

A. I believe so, and Mr. Trefts, I believe it was, in the minutes qualified as a director.

Q. Mr. Craig, can you tell—I will withdraw that question. Mr. Craig, your testimony here has been based on the written report and your testimony is in accordance as you intend it to be with the written report, this report that you made?

A. Yes.

Q. And if your oral testimony should not agree with your written report the written report would control, it would be more apt to be correct than your oral statements?

A. Yes, I would say it would.

Q. And your written report is founded on the sources of information that you have already described?

A. Correct.

Q. From your examination of the records available to you in the audit you have made of the affairs of these companies, did the Cordage Company make a profit in the year succeeding its incorporation?

A. The Cordage Company was first. I can tell you if I look at this (referring to Exhibit #15). Up to October 1, 1917, the books show that there was a surplus created through profits of $27,000.00.

Q. That was what time, 1917?

A. Up to September 30th.

Q. What do the books show as to profits for the ensuing period?

A. Well, the books show that from September 30, 1917, to De- [fol. 78] cember 31st of the same year, that was the first three months of the new company, there was a loss of $24,900.00.

Q. That is taking into account the charging off of the balance of Mr. Gessel after that had been charged off of the books; if that were not charged off there would have been a profit; is that true?

A. That is correct, yes.

Q. The loss as it appears on the books was after Mr. Gessel's indebtedness to the company was charged off?

A. That is correct.

Q. From that period the next period that you have made?

A. Commencing the 1st of January, 1917, there was a surplus, or profit, of $14,237.00.

Q. Up to what point?

A. Up to January 1, 1917. I must amend that last statement before that, Mr. Martin. That loss I mentioned was not including the writing off of Mr. Gessel's account.

Q. If you include the entire amount of Mr. Gessel's indebtedness there would not be a loss?

A. No, there would be a small profit for the three months of $3,000.00.

Q. Now, assuming that Mr. Gessel had no right to charge off his indebtedness in any of the various manners in which it was charged off the books, there was never a period according to the divisions you have made in which the company did not earn a profit, was there?

A. Oh, yes.

Q. When was that?

A. The books show that in the period from January 1, 1918, to September 30th there was a trading profit, that is, on their legitimate business, of $27,800.00.

Q. That is a net profit?

A. That is a net profit, but they had an investment at Milwaukee which was sold and the loss sustained in that sale was $63,000.00.

Q. And none of that was charged to Mr. Gessel's account?

A. None of it.

Q. What *was* the profits of the Western Rope during the year 1918 or the period according to your division?

A. I couldn't conform to the years because they changed their financial year ending.

Q. In that period, what were their profits?

A. There was an actual loss.

Q. I mean according to the books?

A. According to the books there was an actual loss.

Q. What period?

A. From January 1, 1918, to September 30, 1918.

Q. What was the loss?

A. The loss was, in round figures, $36,000.00.

Q. But that loss is arrived at by charging off Mr. Gessel's indebtedness?

[fol. 79] A. No, by charging off the loss when they sold the Milwaukee plant in 1918.

Q. Now, for the next succeeding period was there a profit or loss?

A. From September, 1918, to October, 1919, there was a profit.

Q. How much?

A. $48,000 in round figures.

Q. And that after Mr. Gessel's indebtedness had been charged off. Mr. Gessel's indebtedness in that period was covered by a dividend?

A. No.

Q. But it was charged off in some form at the end of that period?

A. No, not in that figure, because when it was charged off it was not charged off direct; it was charged into a good-will account and left as an asset.

Q. And giving effect to that good-will charge it would make a loss?

A. If that good-will had been written off as worthless, yes.

Q. But aside from that good-will entry, what would the profits have been for that period?

A. $48,000.00.

Q. Now, then, for the next succeeding period, what about the profits or loss?

A. From September, 1919, to September, 1920, the company made a loss of $35,168.00, according to the books.

Q. And that loss is arrived at on the books by cancelling Mr. Gessel's indebtedness?

A. Not in that case, no. I believe when they write off his account and some other assets which they wrote off for $16,000 increased that loss to $51,000; then they wrote off Mr. Gessel's $14,000 increased that to $65,000 and they wrote depreciation off $12,000, making $77,000.

Q. Did your examination of these books inform you whether or not any of the capital stock of either of these corporations had ever been paid for?

A. To this extent, prior to September, 1917, there was no, what I would call correct, capital account kept in the books, at all.

Q. You found no evidence of any payment of capital stock to the company?

A. Not by way of cash, except a few hundred dollars at the beginning.

Q. As far as your examination goes, that is all the capital that ever went into this concern?

A. Mr. John C. Trefts——

Q. I mean until he came in, which was in November, 1919?

A. Yes.

Q. Up to that time there had been no capital paid in to the cor- [fol. 80] poration at all; it had been operated as an indi*fi*cual enterprise?

Mr. Kates: If the court please, the corporate records are in existence, and I believe that would be better evidence.

Mr. Martin: All of this witness' testimony is as an auditor for them and for us.

Mr. Kates: The records are here.

Mr. Martin: I know the best evidence of all this is elsewhere, but we may use the witness for what he knows.

The Referee: Objection overruled.

(Question read.)

Q. Except that it was operated in a corporate name?

A. Yes.

Q. But there was really no capitalization of this company at all, was there?

A. Not until the entries were put through *in* October 1, 1917.

Q. When Mr. Trefts came in, how did he get into the corporation?

A. The books would show he was allotted $50,000 in stock.

Q. And he paid for it?

A. He paid for it in notes which were eventually taken up and paid for in full.

Q. The proceeds of Mr. Trefts' stock actually went into the assets of the company?

A. They did over a period, and also Mrs. Gessel's.

Q. Did Mrs. Gessel buy some stock?

A. $5,000.00.

Q. And she paid for it?

A. It was paid for, I believe, all but I think a small balance of $500.00. I am not sure whether that is a stock debt or not.

Q. Mr. Craig, in regard to an item of the Turman Oil Company, I believe it was in Mrs. Gessel's private account, a collection of something like $2,400.00, as I remember it, your examination of that item resulted in ascertaining this to be a fact, did it not, that the debtor paid about $2,400.00 upon his account; that that went to the credit of the company in the bank, but that Mrs. Gessel took eventually upon the *h*ooks of the company credit for that item, charging it to what account?

A. Well, you see, the entry would be charging the bank when it was deposited, and crediting Mrs. Gessel's account.

Q. So that Mrs. Gessel eventually got the benefit of that $2,400.00?

A. Correct.

Q. But it takes that $2,400.00 to make her indebtedness between [fol. 81] $2,000 and $3,000; you duplicate that item in figuring up Mrs. Gessel's indebtedness to the company?

A. No, I did not.

Q. Well, explain how that is.

A. Mrs. Gessel carried an account with the company. When this check was received or when the money was received it was credited to Mrs. Gessel's account showing the company as owing her $2,400.00. A few days afterwards Mrs. Gessel withdraws a check drawn on the manufacturing department for some $2,000 which represented the balance owing to her by the company, including the Turman Oil Company credit.

Q. And her check exhausted her credit with the company to the extent of the check?

A. At that time; then subsequently there were other charges which sent it up to $2,300 again.

Q. She charged it herself or the bookkeeper charged it?

A. It has not been charged. You see the Turman Oil Company account is shown as an asset as accounts receivable.

Q. Without having credit?

A. Yes, sir.

Q. That item should be credited to Turman Oil Company and Mrs. Gessel should be charged with the same item?

A. Yes, sir.

Q. And she has been charged with it?

A. No.

Q. She has not been charged on the books?

A. No.

Q. Mr. Craig, I believe you say you are in the employ of Hoover & Allison?

A. Yes.

Q. Have been for some time?

A. Yes, except for the time I was away.

Q. You came back to them after you had concluded your service?

A. Yes.

Q. And your appointment was procured *them* them to make the audit?

A. No, it was not.

Q. But you are drawing a salary from them?

A. No, I am not even getting my pay for this, either.

Q. But you came from them and you are going back to them?

A. I am, yes, sir.

Mr. Martin: That is all.

(Witness excused.)

O. K. Eysenbach, recalled for further examination, testified as follows:

Examination by Mr. Kates:

Q. Mr. Eysenbach, who paid you the consideration for the sale of that property on the Jenks road about which you testified?

A. Mrs. Leftwich.

[fol. 82] Q. Did she pay all the consideration?

A. I do not remember whether the check on the Union National Bank was signed by Mrs. Leftwich or Mrs. Chamberlain; Mrs. Leftwich handed me the check.

Q. Mrs. Leftwich handed you all the consideration for that property?

A. Yes, sir.

(Witness excused.)

B. M. Gessel, recalled for further examination, testified as follows:

Examination by Mr. Mitchell:

Q. Mr. Gessel, you have testified that you were not familiar with the books of the Western Rope & Manufacturing Company, heretofore, but so far as you know the credits and charges as have been testified to here are in accordance with the books of the company?

A. I would take Mr. Craig's word that they are.

Q. On December 1, 1916, there was a balance due the company from you of $27,647.74; the books show that that was written off as a bad debt and uncollectible; that was a fact; that sum was never paid and was written off?

A. I never got it.

Q. You never paid it?

A. No.

Q. The books show on September 30, 1919, there was due from you to the company $156,989.50, which was charged on that date to good-will account. I would like to ask you whether or not you ever paid any of that money to the corporation?

A. No, I never paid any actual money.

Q. That was charged to a good-will account and nothing was paid into the company on that account at that time?

A. No, sir.

Q. Could you have paid $156,989.50 at that time?

A. Personally?

Q. Yes.

A. No, sir.

Q. You were not able to do that. There was on March 31, 1920, due from you to the company from October 1, 1919, to March 31, 1920, $14,067.51, which was charged off, reducing the surplus of the company by that amount. Did you ever pay that amount to the corporation?

A. No, sir.

Q. The books show that the company owned some property which we call the Terrace Drive property. That property was sold and $5,000 was charged to your account by reason of that sale by Mrs. Leftwich. I would like to ask you if you ever got that money?

A. I don't remember getting it.

[fol. 83] Q. As far as you know, the company never got that money?

A. I don't know whether it did or didn't.

Q. If the charge was made to your account, it was an improper charge?

A. So far as I know it would be.

Q. The effect of that, Mr. Gessel, would have been that you got the money, put it in your pocket and the amount was charged to your account. That did not happen?

A. I never remember getting $5,000.

Q. Well, you would remember getting it out of the proceeds of that sale, wouldn't you?

A. Yes, I think so.

Q. The records show that there was credited to your account $20,776.00 by check of the Union National Bank payable to Gessel Oil Company. I will ask whether or not you ever got that money?

A. Whether I ever got it?

Q. Yes.

A. That was given to the American National Bank by me to be credited to the Western Rope & Mfg. Co.

Q. To whom did you deliver that?

A. Joe Olsan, president of the bank.

Q. Do you recall when that was done?

A. That was done while the Olsans was in the company, I would say, about the latter part of March or some time the first part of April.

Q. 1920?

A. Yes, sir.

Mr. Linn: Wasn't that before you had any agreement?

A. No, I can relate the circumstances.

Mr. Linn: I wish you would.

Q. The check was dated March 30, 1920, but the entry in the books was not made until April 1, 1921.

A. I had not been given credit and found that out later on and had Miss Howard give me credit. At the time it was done no one gave me credit.

Q. Where did you get that money?

A. That was a loan on the Gessel Oil Corporation. At the time that happened the Oslan Brothers was connected with the Western Rope handling finances, and Mr. Olsan made a loan, as I remember, of $60,000.00 on the Gessel Oil Corporation for the benefit of the Western Rope. There was at that time, as I remember, an overdraft in the Union National Bank charged to the Western Rope of something like close to $30,000.00.

Q. The Union National?

A. Yes, sir. Then they made the loan over there and Mr. Olsan told me he had to pay $6,000 for the loan, leaving the difference, which was made in the form of a check. Mr. Olsan brought it over to the office and I endorsed it and Mr. Olsan took it back to the bank [fol. 84] and deposited it, so he told me a few minutes afterwards. Mrs. Gessel sent the checks out and they came back protested.

Q. You mean by that you borrowed $60,000, less $6,000 interest, and gave as security Gessel Oil Company property?

A. Yes, sir.

Q. And out of that there were overdrafts of the Western Rope & Mfg. Company with the Union National Bank to the extent of $30,000?

A. Something like that.

Q. And out of the proceeds of that loan these overdrafts were paid?

A. Yes, sir.

Q. Then there was a balance which amounted to $20,000 for which they gave you a cashier's check and you turned that cashier's check over to Olsan Brothers for deposit in the American National Bank. Joe Olsan, president of the American National Bank?

A. Yes, sir, for deposit to the Western Rope & Manufacturing Company.

Q. That was never done?

A. I don't know whether it was ever done or not.

Q. Anyhow, when you had it credited to your account you must have been convinced the company didn't have it charged?

A. It was to the credit of the Western Rope.

Q. Credited on the books of the Western Rope to you as a payment to the company by you?

A. I had furnished that through the Gessel Oil Corporation.

Q. The Western Rope didn't get it?

A. I won't say they didn't get it. I have told you the way the Western Rope got credit for it. I gave it to the Western Rope.

Examination by Mr. Linn:

Q. You turned over this check to Joe Olsan as president of the American National Bank with directions to deposit it to the credit of the Western Rope & Manufacturing Company?

A. Yes, sir, and he called me up a few minutes afterwards and said he had done it.

Q. He then informed you over the 'phone that that had been done and you drew checks against it?

A. Yes, sir.

Q. And those checks came back protested?

A. Yes sir. Mr. Joe Olsan, in his testimony here at the trial, testified that he deposited that check to the Western Rope.

Mr. Mitchell: I remember very clearly that he swore he did.

[fol. 85] Q. You never knew until recently but what that had been done?

A. I don't know it yet.

Q. Well, you did not take credit for furnishing that money on the Western Rope's books until nearly a year afterwards?

A. No, sir, it was an oversight on my part.

Q. Mr. Gessel, I hand you a paper which purports to be a contract and agreement made and entered into at Tulsa, Oklahoma, on the 6th day of April, 1920, between the Western Rope & Manufacturing Company, Olsan Brothers, J. Olsan, L. Olsan and B. Olsan, of Tulsa, Oklahoma, and Farrar & Trefts of New York, by its treasurer, John C. Trefts, of New York. I would like to ask you what that is?

A. That is a contract entered into between the Western Rope, Mr. Trefts and Olsan Brothers.

Q. Farrar & Trefts of which Mr. John C. Trefts is the treasurer?

A. Yes, sir.

Q. I will ask you if this signature, Western Rope & Manufacturing Company, by B. M. Gessel, if that is the signature of the Western Rope & Manufacturing Company, by you?

A. Yes, sir.

Q. That B. M. Gessel is your signature?

A. Yes, sir.

Q. Do you know the signature of Olsan Brothers?

A. No, I don't.

Q. Do you know John C. Trefts' signature?

A. Yes, sir.

Q. Is that the signature of John C. Trefts? Mr. Trefts has signed as Farrar & Trefts?

A. Yes, sir.

Q. Then the additional signature is John C. Trefts' signature?

A. Yes, sir.

Mr. Mitchell: I want this contract marked Trustee's Exhibit #30, and I want to offer that contract in evidence at this time.

Examination by Mr. Kates:

Q. Mr. Gessel, the furniture that went into your house on Madison Avenue that was paid for by funds of the Western Rope and charged to your account?

A. Partly by the funds of the Western Rope and partly by my own.

Q. The piano, was that paid for by the Western Rope?

A. I think partly by their check and partly mine.

Q. Have you any idea how much money went into that furniture?

A. No, sir.

Q. What has happened to that furniture?

A. Well, the furniture was stored down in Nichols Transfer Company's house with the exception of some that was sold to the man that bought the property. Some of the furniture was sold to him.

Q. The balance was put in storage?

A. Yes, sir.

[fol. 86] Then what happened to it?

A. It was given to Mrs. Gessel by me in our settlement.

Q. Mr. Gessel, in January of 1921 the Western Rope owed the Andrews Steel Company two notes of $5,000 each and one for $4,-634.58. There was some correspondence about their taking back some steel in payment of these notes. Did you have any conversation with representatives of the steel company in January, February, March or April of 1921?

A. No.

Examination by Mr. Martin:

Q. Mr. Gessel, were you the owner of the Gessel Oil Corporation?

A. Yes, sir.

Q. The sole owner?

A. Yes. However, I was not the sole owner of the holdings.

Q. But you were the owner of the company?

A. Corporation, yes, sir.

Q. And whatever the interest of the corporation was, was your interest?

A. Yes, sir.

Q. You sold that property?

A. Yes, sir.

Q. What did you get for it?

A. $160,000 for my interest.

Q. And you put the entire proceeds of that sale into the payment of debts of the Western Rope Company?

A. I didn't do it; I never seen the money.

Q. You directed it to be done?

A. Yes, sir.

Q. Amounting to about $170,00.00?

A. $160,000.00.

Q. When did you make that payment or when did you put that payment in?

A. As I remember it would be some time in April, 1920, to the best of my recollection.

Q. That was the advance money; at that time you considered that the Western Rope Company owed you that money?

A. You mean the money I put in?

Q. Yes, and you took a mortgage back and some notes to evidence the debt?

A. Yes, sir.

Q. That is why that advanced money did not go upon the books of the company to the credit of any indebtedness that you might have owed the Western Rope & Manufacturing Company at the time?

A. Yes.

Q. Because you treated it as an indebtedness due from the company to you?

A. Yes.

Q. Acting upon the assumption that the credits that had been given you in your account with the Western Rope that you were entitled to receive?

A. Yes, sir.

Q. Now, Mr. Gessel, when the Western Cordage—I will call it that for short—was incorporated you had the stock issued to you?

A. Yes.

[fol. 87] Q. You didn't put in any money representing this stock at the time?

A. No, I had been doing business for some little time just as an individual.

Q. As Ben Gessel?

A. The first start of the Western Rope & Cordage was by myself and a man by the name of Woodward, then after a short time I bought his interest.

Q. Then you incorporated and kept on running it?

A. And turned the assets of my own individual company into the company.

Mr Mitchell: And took stock?

A. Yes.

Q. What you turned in was merely the name that you were operating under?

A. Whatever stock I had on hand and bills receivable.

Mr. Mitchell. All the property you had?

Mr. Martin: Pardon me; let me examine this witness for the present.

Q. At that time, Mr. Gessel, the capitalization, the first capitalization of the Western Cordage Company was how much?

A. The what?

Q. The authorized capital stock, the amount of stock that was issued? A. I think it was $25,000.00.

Q. Was that ever increased?

A. I won't say whether the capitalization was ever increased or not.

Q. Now, when the Western Rope & Manufacturing Company was incorporated it merely took over the assets and the liabilities of the Cordage Company?

A. Yes, sir.

Q. It was incorporated for a capitalization of how much?

A. I think $150,000.00.

Q. You took all of that stock?

A. No, I don't think so.

Q. Do you know how much was issued?

A. No, I don't.

Q. But whatever was issued was issued to you?

A. Yes, sir.

Q. And you distributed enough around to have qualifying directors?

A. Yes, sir.

Q. You continued to operate the company in that way?

A. Yes, sir.

Q. Until Mr. Trefts became interested?

A. Yes, sir.

Q. In the meantime you had promised some stock to Mrs. Gessel?

A. I think she had some of the stock.

Q. She paid for that, did she not?

A. I don't remember. I know that she paid for some stock. She put in something like $3,600.00, if I remember right.

[fol. 88] Q. Now, then, in this increased capitalization from $25,000.00 to $150,000.00 there was nothing went in at all except the business of the Cordage Company, its assets and its liabilities, when you changed from the Cordage Company to the Western Rope & Manufacturing Company?

A. Yes, sir.

Q. And you continued to operate it individually up until Mr. Trefts bought some stock?

A. Yes, sir.

Q. While Mrs. Gessel owned some stock you treated it as your own?

A. No, I didn't.

Q. You didn't call it yours, but you handled the company the same as if you were the sole stockholder?

A. Yes.

Q. And you owned the Gessel Oil Company, so when you took money out of one and put it in the other you was taking it out of your left pocket and putting it in your right?

A. Whatever was taken out for the Western Rope & Mfg. Co. was paid back.

Q. You kept the money and if any money went from the Western Rope & Manufacturing Company it was paid back?

A. There was never but one time any was taken out.

Q. You practically owned both companies at the time of that transaction?

A. Yes, sir.

Q. Mr. Gessel, when you would take any money out of either one of these companies and it would be charged to your account, that was just a matter of bookkeeping, was it not? You were not stealing money from anybody?

A. I thought I was not.

Q. You had a right to the money and were treating it as such?

A. That is the way I figured it.

Mr. Martin: That is all.

Examination by Mr. Booth:

Q. Mr. Gessel, you have been asked by Mr Mitchell in reference to certain items appearing in the account as shown by the auditor which shows on the face of the audit as owing by you to the company. The first appears in the balance sheet of August 1, 1917, $27,647.74. That is the amount charged to you at the time the manufacturing company took over the Cordage Company. In that same balance sheet there appears a dividend $35,797.78. Did you ever receive that dividend as a cash dividend?

A. No, sir.

Q. The only way you drew any part of that money was when you drew a check and it was charged to your account. You never did repay the $27,647.74?

A. Not that I remember.

Q. But it was carried as an account against you and increased or diminished as charges were made to your account?

A. Yes, sir.

Q. With reference to the item of $156,000 which was charged [fol. 89] into good-will account; how did that happen to be charged that way?

A. You mean how it was charged to me?

Q. How was it charged over into good-will account; just explain the circumstances.

A. How it came to be charged off, that was charged off at the time Mr. Trefts came into the company. Mr Trefts wanted to come into the Western Rope & Manufacturing Company. I met Mr. Trefts in Buffalo and was going down to New York to try and borrow some money, and I stopped in Buffalo and was talking to Mr. Trefts and he said, "I would like to come into your company and put in any amount of money you want." He at first wanted to take $100,000, and I told him $50,000 was all I cared to let go at that time. He said, "All right, I will take it. Go on back to Tulsa and I will be over there in a few days and pay it." He came here and he and I talked the matter over in the office and I told Mr. Trefts: Here is $156,000 charged to me personally; I haven't got that money today to put into the company and I don't feel as though I care to pay that money in or obligate myself to pay it. I said: It is worth that to build the company up. He very readily agreed with me, and said: "Charge it off."

Q. At that time who were the stockholders of the company?

A. Myself.

Q. And Mrs. Gessel?

A. I think she had some stock.

Q. And Mr. Trefts under those circumstances acquired his stock?

A. Yes.

Q. It was satisfactory to everybody in the company?

A. Yes, sir.

Q. At that time were any of the creditors here creditors of the company?

A. I think so.

Q. Which ones?

A. Hoover & Allison were.

Q. They were current creditors from month to month?

A. Yes, sir.

Q. The obligation which has been reduced to judgment, the Hoover & Allison claim, the amount of that claim accrued from transactions after that date?

A. I won't say it all was, but it partly was.

Q. The Mercantile Trust Company of St. Louis were not creditors at that time?

A. I don't think they ever were creditors.

Q. Could you, Mr. Gessel, give an approximate estimate of the debts now in existence which were in existence at that time?

A. No.

Q. You couldn't tell that from an examination of the books?

A. No.

Q. These balance sheets and auditor's report, Mr. Gessel, you say you think they are correct?

A. I feel that way about it.

[fol. 90] Q. As to the items charged into your personal account, could you tell whether you received the money or not?

A. No, I didn't pay any attention to it.

Q. As to what was charged or credited to your account, you made no examination?

A. No, sir.

Q. You had an audit made of your books?

A. Yes, sir.

Q. How many?

A. I think three.

Q. At the end of those audits those reports were submitted to you?

A. Yes.

Q. And you were advised by the audit that you had credits on the books?

A. Yes.

Q. And you drew money against them?

A. Yes.

Q. There was one item inquired about commission on sales 3% aggregating something like $28,000.00. How did that item happen to be placed on the books?

A. That was done at the time Mendenhall & Write of Kansas City audited the books and they advised me that that was the proper procedure; I was at that time the head salesman and doing practically all the selling, and that it was perfectly legitimate to give me a credit of 3%. I didn't even question it.

Q. That money wasn't actually paid to you, but carried as a credit to your account?

A. Yes, sir.

Mr. Mitchell: Your salary was going on at that time was it not?

A. Yes, sir.

Q. Mr. Gessel, at the beginning of this operation, even prior to the incorporation of the Cordage Company, when you started business, how much capital did you put in the business

A. As I remember, about $23.00.

Q. And you built it up by your management and hard labor?

A. Yes, sir.

Q. Did you ever pay yourself any money for the stock you drew out?

A. No.

Q. It was only by transfer of the assets you built up?

A. Yes, sir.

Q. Now, there are some items, one item, I think, of $85,000, with reference to the Milwaukee transaction.

A. I think you will find that is about $13,000.00. When the Milwaukee branch was closed out—we were handling a great many gas engines and it became almost impossible to buy gas engines on the market, and I had been purchasing a lot of engines from a firm in Tennessee. I made a deal with the manager of that concern to manufacture these engines for us. We went to Milwaukee and purchased a plant there and started in to build gas engines.

Q. Who, the Western Rope?

A. Yes, and also bought a foundary there and built these engines [fol. 91] for some time, but the game was a little too big and we couldn't quite make it go; and when that plant was closed out there wasn't enough assets to cover the indebtedness by about thirteen or $14,000.00. Therefore I assumed that indebtedness over and above the actual assets of the company personally and paid it off.

Q. Out of your personal funds?

A. Yes, sir.

Mr. Mitchell: Charged it to the Western Rope & Manufacturing Company in your account?

A. Yes, sir.

Q. Those are the items of July 31, 1920, crediting moneys paid Milwaukee account $8,500.00, and on January 31, 1921, crediting Milwaukee paid to close Milwaukee debt $5,285.00?

A. Yes, sir.

Q. Making between thirteen and $14,000.00?

A. Yes, sir.

Q. Now, in reference to your residence which was charged into the company at $55,000.00 and charged out again, Mr. Gessel, that property never was the property of the Western Rope & Manufacturing Company? A. I never considered it so.

Q. Explain how that transaction happened.

A. That was done because there was some litigation started against me personally; didn't have any other way to keep them off of me at that time. I would rather not go into that matter.

Q. You made a deed and it was not recorded. The Western Rope & Manufacturing Company never lost anything or gained anything?

A. No, sir.

Q. Some inquiry has been made with reference to the notes, one note for $10,000 and one for $160,000. What did the $10,000 note represent?

A. That represented $10,000 which was borrowed by myself for the Western Rope.

Q. Where did you borrow that?

A. The American National Bank. The Western Rope had borrowed its limit and I borrowed $10,000 personally, put it into the company and assumed that note.

Q. Where did that note finally get to?

A. Exchange National Bank; I paid off $2,000 and have put up surety to secure it.

Q. And that note and the mortgage made the $170,000?
A. Yes, sir.
Q. Mr. Gessel, referring to Trustee's Exhibit #30, which was offered in evidence a few minutes ago, this was a contract made between you and Mr. Trefts and the Olsan Brothers at the time you were contemplating reorganizing the Western Rope & Manufacturing Company?
A. About that time.
Q. The Western Rope & Manufacturing Company was an Oklahoma corporation?
A. Yes, sir.
[fol. 92] Q. And the Olsans had proposed to assist you in financing the corporation; they had rendered their services to you?
A. They made a proposition to finance it for fifty per cent.
Q. And incorporate under the laws of Delaware?
A. Yes, sir.
Q. And increase the capital stock to one million dollars?
A. Million and a half.
Q. That new corporation was to operate under the name of Western Rope & Manufacturing Company of Delaware?
A. Yes, sir.
Q. At the time this contract was entered into you had in contemplation the reorganization of the old company and reincorporating under the laws of Delaware?
A. Well, at the time this contract was entered into; that reorganization did not go through.
Q. But you had it in contemplation at the time it was made?
A. Yes, sir.
Q. And the reference in that contract to the effect that the Gessel Oil Corporation was held in trust for the Western Rope & Manufacturing Company was for the new corporation?
A. Yes, sir.
Q. It was the purpose of yourself and Mr. Trefts to turn the Gessel Oil Corporation into the Wilmington, Delaware, corporation?
A. Yes, sir.
Q. And the reference in there as to that being property of the Western Rope & Manufacturing Company was the new organization, and not the old?
A. The new, that is right.
Q. The Gessel Oil Corporation had always been your property?
A. Yes, sir.
Q. You built it up at your own expense?
A. Yes, sir.
Q. This contract was never carried out on the part of the Olsans?
A. No, sir.
Q. And you operated under the old company?
A. All the time.
Q. No part of this was ever carried out except the purchase of the Gessel Oil Corporation was afterwards taken over by Mr. Trefts?
A. Yes, sir.

Examination by Mr. Kates:

Q. In reference to that reorganization I believe the books show $1,500.00 was paid to Samuel A. Boorstin; what was that for?
A. That was for a charter.
Q. Was that for legal services?
A. For the charter.
Q. For the expense of the charter?
A. Mr. Boorstin told me that is what the charter cost I have found out since it cost $225.00.
[fol. 93] Q. That was not paid Mr. Boorstin for legal expenses?
A. No, sir.
Q. Was Mr. Boorstin representing you or the Olsans?
A. The Olsans, any more than he was looking after getting the charter.
Q. But he was to look after the new charter?
A. Yes, sir.

Examination by Mr. Booth:

Q. Under your agreement with the Olsans, they were not putting any money into the corporation?
A. They didn't put any in.
Q. Never did?
A. Well, I won't just say that.
Q. They were to get their interest for financing the corporation?
A. Yes, they were to put $200,000 in, which they didn't do.

Examination by Mr. Mitchell:

Q. Mr. Gessel, as a matter of fact, this contract identified as Trustee's Exhibit #30 was made with the Olsans and Farrar & Trefts after the Olsans had failed to comply with a prior arrangement?
A. Yes, sir.
Q. This was in settlement of your differences in connection with that failure?
A. At that time, as we understood them, but that was not true.
Q. But it was understood that they were creditors at that time and you made this adjustment and that is what this contract is?
A. Yes, sir.
Q. And at the time this contract was signed it was not contemplated you would operate the Delaware corporation at all; you had abandoned that idea?
A. Yes, sir.

Examination by Mr. Booth:

Q. There is a recitation in this contract, Mr. Gessel, that Western Rope & Manufacturing Company was indebted to the Olsan Brothers in approximately $170,000.00; no part of that was true?
A. No, sir.
Q. The indebtedness referred to there was really the indebtedness to the American National Bank?

A. Yes, sir. They represented that they had endorsed all that paper and were responsible and afterwards proved that they had not and were not responsible for it in any way.

(Witness excused.)

ANNA B. CHAMBERLIN, produced, sworn and examined as a witness at the time and place above mentioned, testified as follows:

[fol. 94] Examination by Mr. Mitchell:

Q. Will you state your name?
A. Anna B. Chamberlin.
Q. Where do you live, Mrs. Chamberlin?
A. Twenty-seventh and Peoria.
Q. In the City of Tulsa?
A. Yes, sir.
Q. Tulsa County, Oklahoma. What is your husband's name?
A. Edgar S. Chamberlin.
Q. Is Mr. Chamberlin living?
A. Yes, sir.
Q. You are the mother of Agnes Leftwich Gessel?
A. Yes, sir.
Q. How long did you live in Tulsa, Mrs. Chamberlin?
A. I lived in Tulsa different times.
Q. How long have you lived here this time?
A. Since the first of 1918.
Q. Since the first of 1919?
A. 1918.
Q. Since then, down to the present time, you have lived in Tulsa?
A. Yes, sir.
Q. Where did you live before you lived in Tulsa?
A. Broken Arrow.
Q. How long did you live in Broken Arrow?
A. Well, off and on for about ten years.
Q. And that was immediately prior to the time you came to Tulsa?
A. Yes, sir.
Q. Where did you live before that time?
A. Lived in Tulsa.
Q. How long did you live in Tulsa on that occasion?
A. About two years.
Q. And before that, where did you live?
A. Why, we lived in Erie, Kansas, for about fifteen months.
Q. And prior to that date?
A. In Chicago.
Q. Chicago, Illinois?
A. Yes, sir.
Q. And prior to the time you lived in Chicago?
A. Well, we lived on a farm in Michigan.
Q. Where?
A. Marcellus.

Q. And prior to that?
A. Chcago.
Q. Chicago again for how long?
A. All my life.
Q. You were born in Chicago and lived there until you went to Marcellus to live?
A. Yes, sir.
Q. You said that you live now in Tulsa County; what is that address?
A. Twenty-seventh and Peoria.
Q. That is on the Jenks road?
A. Yes, sir.
Q. And when was that house built in which you now live?
A. In 1919.
Q. Beginning when?
A. In the spring of 1919; I just can't say exactly when.
Q. In the spring of 1919?
A. Yes, sir.
Q. You began the construction of that property?
[fol. 95] A. Yes, sir.
Q. Do you remember when the property was bought?
A. Yes, sir.
Q. From whom was that property purchased?
A. Well, it was purchased through Mr. Blair.
Q. Do you know who sold that property?
A. Mr. Eysenbach.
Q. Mr. O. K. Eysenbach; and was that property deeded to you?
A. Yes, sir.
Q. How much did you pay for that property?
A. $9,375.00.
Q. And you immediately began the construction of the residence on that property?
A. Yes, sir.
Q. And that house was finshed then about when?
A. The house was finished in the fall but we lived in the garage from June.
Q. Finished in the fall of 1919?
A. Yes, sir.
Q. Who built that house?
A. Mr. Blair.
Q. Mr. Blair was the contractor?
A. Yes, sir.
Q. Could you state approximately what that house cost?
A. Well, I think first he told us the estimate at $23,000.
Q. What did it finally cost?
A. Well, I can't say exactly; something like $30,000.
Q. $30,000?
A. Yes, sir.
Q. And the lot you said cost about $9,300.00, so there is invested there approximately $40,000 at this time?
A. I couldn't say that much, but very close to that amount.

Q. When the property was purchased of Mr. Eysenbach did you conduct the negotiations for that purchase?
A. Yes, sir.
Q. You didn't with Mr. Eysenbach, personally?
A. No, sir, with Mr. Blair.
Q. Did you ever see Mr. Eysenbach in connection with it?
A. Not at that time.
Q. Did you any time up to the time you purchased the property?
A. No, not at all.
Q. Did you pay Mr. Eysenbach for the property?
A. I paid Mr. Blair for Mr. Eysenbach.
Q. Do you now remember how you made that payment?
A. The first payment I think was $375.00.
Q. And that money was given to Mr. Blair?
A. Yes, sir.
Q. Did you give him your check for that amount?
A. I did.
Q. Drawn on what bank?
A. On the American.
Q. On the American National Bank?
A. Yes, sir.
Q. Then when was the next payment?
A. I think the following month.
Q. And how much was that payment?
[fol. 96] A. I think a thousand dollars.
Q. And how did you pay that?
A. I paid it with a check.
Q. Drawn on what bank?
A. American.
Q. American National Bank?
A. Yes, sir.
Q. And then the next payment, Mrs. Chamberlin?
A. The next payment, I think, was $3,000.00.
Q. $3,000.00?
A. Yes, sir.
Q. And you paid that to Mr. Blair?
A. I did.
Q. You gave him a check for $3,000.00 drawn on the American National Bank?
A. Yes, sir.
Q. That makes $4,500.00. When did you make another payment on the land?
A. Well, I don't just remember about that; we sold some of the acreage.
Q. What acreage was that?
A. Out there; an acre and three-fourths.
Q. To whom did you make that sale?
A. Virginia Childs and Dr. Crume.
Q. How much did you realize for that?
A. $5,250.00.

Q. That was a cash transaction?
A. Yes, sir.
Q. Then did you take that money and pay it to Mr. Blair?
A. I just don't remember that.
Q. Do you remember substantially the date of that last payment on account of the lot?
A. No, sir, I don't.
Q. Was it after the house was built?
A. No, it wasn't.
Q. Was it after the house was started?
A. Couldn't tell you.
Q. You don't remember when it was?
A. No, sir.
Q. Do you know whether that was paid by check or not?
A. No, sir.
Q. Did you handle that transaction yourself?
A. I can't say that either; I don't remember whether I gave it to Mr. Blair or whether my daughter gave it to Mr. Blair.
Q. You paid for the land first $375.00 with a check on the American National Bank?
A. Yes, sir.
Q. You then paid to Mr. Blair another $1,000 by check on the American National Bank?
A. Yes, sir.
Q. And then you paid an additional $3,000 which you also gave to Mr. Blair in the form of a check on the American National Bank?
A. Yes, sir, that is right.
Q. This was all in payment for the lot?
A. That was for payments on the lot.
Q. Had nothing to do with the construction of the house?
A. Not at all; it was made out to Mr. Eysenbach.
Q. Were those checks made to Mr. Blair or Mr. Eysenbach?
A. No, to Mr. Eysenbach.
[fol. 97] Q. The check for $375.00 and $1,000.00?
A. All of them.
Q. And then you made a sale of a portion of the property and realized around $5,500.00?
A. $5,250.00.
Q. And that was used to pay?
A. I think it was.
Q. If it was not then, how was the balance paid?
A. I had other resources to build this house?
Q. That is what I want to get at; if you used that we want to know?
A. I don't just remember how that was done.
Q. You can't remember how that final payment was made?
A. No, sir.
Q. You don't know whether you made it or some one else?
A. No, sir, I don't.
Q. Do you know whether your bank account was charged with it, I mean taken out of your account?

A. I can't tell; I presume it was, I had the money.
Q. Would you know whether it was or not?
A. No, I can't remember.
Q. Wouldn't you know whether as much as $5,000.00 of your money was used for a certain purpose?
A. Not necessarily.
Q. How much money did you have at that time?
A. I had about, before we built this house, I had resources about thirty-three or four thousand dollars.
Q. Where did those resources come from, Mrs. Chamberlin?
A. Well, I had some money—do you want to know where I first got my money?
Q. Yes, ma'am.
A. Mr. Chamberlin settled $4,000 on me in 1911.
Q. That was the first money you had?
A. No, I had a little money before that, but he settled that $4,000.00 on me in 1911 and in 1912 my father gave me $3,000.00.
Q. Where did your father live?
A. In Chicago.
Q. What is his name?
A. James Arthur Cloo——
Q. Is he living?
A. No, sir, he has been dead since the fall of 1912.
Q. He gave you $3,000?
A. Yes, sir.
Q. What other resources did you have?
A. Well, we have done lots of business since that time.
Q. What business have you done?
A. We went in business in Broken Arrow.
Q. What was the business?
A. Grocery business.
Q. Did you make a very substantial amount?
A. Not very much, but approximately $5,000 between us.
Q. And which you had when you came to Tulsa?
A. Yes, sir.
[fol. 98] Q. And what other resources did you have?
A. My daughter had this money and used it. I gave her money from time to time; we were in the store. I let her use my money.
Q. She used all of your money?
A. Yes, sir, most of it.
Q. She used it as if it was her own?
A. Yes, sir.
Q. When you came to Tulsa did you open a bank account at that time?
A. No, sir, she had the money and put it into a house on Norfolk.
Q. What is the date of the purchase of that house?
A. 1918, some time.
Q. What is the number of that?
A. #1530 South Norfolk.
Q. Do you remember what you paid for that?

A. $11,500.00.

Q. And that was paid by your daughter with your money?

A. Not altogether my money.

Q. Some of her money?

A. Yes, sir.

Q. And that is what you did with your money when you came to Tulsa?

A. Not altogether.

Q. Did you have at that time any other money?

A. Yes, sir.

Q. Did you have a bank account at that time?

A. I guess I had a bank account at the Union National Bank.

Q. As far back as 1918?

A. Yes, sir.

Q. Do you remember what the amount of that bank account was, substantially?

A. No, sir.

Q. Was it in excess of a thousand dollars?

A. At times.

Q. Do you think it was ever as much as $5,000?

A. I don't remember that.

Q. Now, then, when you paid for this lot in the way you have described, that is, by giving Mr. Blair a check payable to Mr. Eysenbach for $375.00, a thousand dollar check drawn on the American National Bank, which was given to Mr. Blair, and a $3,000.00 check, and then the proceeds for the sale of this land; now, after you made the first payment on this land of—the first two payments, of $375.00 and $1,000.00, did you give Mr. Eysenbach a mortgage to secure the balance?

A. Gave notes and a mortgage.

Q. You gave those to Mr. Eysenbach?

A. Yes, sir.

Q. And when you paid $3,000.00 you got back $3,000.00 worth of notes?

A. Yes, sir.

Q. And when you sold off this property and got $5,250.00, you used that?

A. I can't say.

Q. Well, either that or some other money of your own?

A. I can't say.

Q. It might have been your daughter's?

[fol. 99] A. It might possibly be.

Q. Now, you then entered into a contract with Mr. Blair to build that house the contract price——

A. No, sir, there wasn't a contract; it was day labor.

Q. And you were to make payments to him, how frequently?

A. Every week.

Q. Every week you were to pay him what he had expended in the construction up to that *that* time?

A. Yes, sir.

Q. You were to pay him on the basis of the cost of the house plus a commission fee?

A. Yes, sir.

Q. He was to get the exact cost plus ten per cent?

A. Well, we didn't pay his percentage at that time; that was to be paid later.

Q. And was that paid to him?

A. That was.

Q. So that you paid all of the bills?

A. Would you permit me to look at my notes to tell you what resources I have?

Q. Oh, yes.

(Witness refers to memorandum.) $9,000 on the Norfork house. This was the resources I had before we started building this house. $5,250.00 from the acreage; $2,000.00 from a store I sold in Broken Arrow; $1,700.00 from a house in Broken Arrow. $6,000.00 in certificates.

Q. Certificates of what?

A. Certificates of deposit.

Q. In what bank?

A. In the American.

Q. In the American National Bank?

A. Yes, sir.

Q. Was that your money?

A. That was both our money; we had it since 1917.

Q. Money that both you and your daughter had deposited?

A. Yes, sir.

Q. You had that amount at the American National Bank?

A. At the Central National and American National.

Q. In two places. When, at the Central National?

A. Well, while she was doing business with that bank.

Q. Was it in 1918?

A. 1917, I think.

Q. And then you opened the account in 1917 at the Central National?

A. She did.

Q. And then it was closed out and you opened an account at the American National; when was that?

A. I think 1918 or 1919.

Q. And what other resources?

A. Well, there was $5,000 from a house, #420 Xanthus; sold for $6,500.00, and I had an equity of $5,000.00.

Q. Was that your property?

A. Yes, sir.

Q. Did the money that purchased that come from you?

A. Well, it paid out pretty well itself.

Q. What did you pay for the house?

A. Something like $1,700.00.

[fol. 100] Q. Did you make any improvements on it?

A. Yes.

Q. Do you know what that cost?

A. No, not from memory, but it sold for $6,500.00.
Q. And it had a mortgage of $1,500.00?
A. Yes, sir.
Q. What else?
A. Mr. Chamberlin put $5,000.00 in our home.
Q. Of his own resources?
A. Yes, sir.
Q. And what else?
A. Well, I borrowed some money on bonds, $2,000.00.
Q. Were those bonds yours?
A. Yes, sir.
Q. Where did you get those bonds?
A. Got them some time in 1918, I think, at the Union National.
Q. What kind of bonds were they?
A. I can't remember; Liberty bonds.
Q. And the money to purchase those, did you furnish that?
A. I furnished part of it.
Q. Do you know what part you furnished and what part she furnished?
A. I don't; she bought the bonds for us.
Q. Is that all the resources?
A. Well, that amounts to something like over $34,000.00.
Q. Well, your investment in the house was about $40,000?
A. Then I sold another house.
Q. What house was that?
A. #55 Xanthus.
Q. That is the one you spoke of awhile ago?
A. No, sir, that was #420.
Q. How much did you get for that house?
A. Got about $5,500.00 for it.
Q. Was that net?
A. No, there was $2,000.00 mortgage; something like $3,000 out of it.
Q. And when you bought that house how much did you pay for it do you remember?
A. My daughter bought that house for something like $600.00 and it was paying out all the time.
Q. You improved it of course?
A. Yes, sir.
Q. Do you know what the improvements cost?
A. No I don't.
Q. And the money that that house represented came from Mrs. Gessell?
A. Not altogether; we had our money together.
Q. All the time you were carrying your money together?
A. Yes, sir.
Q. And what other resources, this would make about $37,000.00?
A. Well I don't just remember now.
Q. Did Mrs. Gessel put any of her money into the home at all aside from what she put in with you?

A. Not that I know of.

[fol. 101] Q. When you started to pay Mr. Blair for this house did you give Mr. Blair a check for the first payment do you remember?

A. I paid him every week.

Q. Did you pay him in checks?

A. Yes, sir.

Q. Were they your checks always?

A. I think so.

Q. And all payments were made to Mr. Blair direct?

A. Yes, sir, I think so.

Q. Then all of these checks were drawn on the American National Bank?

A. I couldn't say positively but I think so.

Q. Where else did you have an account?

A. At that time I think in the Producers Bank.

Q. Did you have any other account?

A. Well the first time I came to Tulsa I had an account in the Union National.

Q. But during the time you were building this house did you have any other account except the American and Union National?

A. I think not.

Q. Did anybody else check on your account?

A. My daughter.

Q. She could sign checks on these accounts?

A. Yes, sir.

Q. Or you could?

A. Yes, sir.

Q. Were those checks usually signed by you or were they signed by your daughter?

A. I don't remember; I think she signed them some times for me.

Q. Mrs. Chamberlin, have you the cancelled checks which you gave to Mr. Blair in payment for the lot out on the Jenks Road?

A. I think I have.

Q. Where are those?

A. I think they are home.

Q. Can you produce them tomorrow morning?

A. If it is necessary I think I can.

Q. I think it is very necessary.

A. All right I can bring them.

Q. And the checks payable to Mr. Blair for the construction have you those checks?

A. I think I have.

Q. Can you bring those tomorrow?

A. I guess so.

Q. Have you your bank books?

A. I don't know.

Q. But you have all the cancelled checks?

A. I don't know whether I have all of them or not.

Q. But you got them back when your book was balanced and you received a statement and you have kept them and can produce them?

A. Well, I will see.

Q. Do you know whether you have the statement that they furnished when they returned the checks?

A. I will look for it, I dont know. I will look and see.

[fol. 102] Q. Now this house on Norfork that was where you lived before you moved to the present house?

A. Yes, sir.

Q. And that house was sold for I believe you said $6,500.00?

A. No, sir, $13,000.00.

Q. From whom did you buy that house?

A. There was a $4,000.00 loan on it.

Q. There was a mortgage for $4,000?

A. Yes, sir.

Q. Who did you buy that house from?

A. Mr. Blair; my daughter negotiated for it.

Q. And that was deeded to you?

A. Yes, it was deeded to me later.

Q. But at first it was not?

A. No.

Q. That is right, it was first deeded to your daughter?

A. Yes.

Q. And afterwards deeded by your daughter Mrs. Gessel to you?

A. Yes, sir.

Q. You didn't buy it from Mrs. Gessel because it belonged to you all the time?

A. We had money in it together; I think I paid one of the notes or two.

Q. And when it was originally purchased you bought that from Mr. Blair?

A. Yes, sir.

Q. Did Mr. Blair own the house?

A. I think he did.

Q. Do you recall how much you paid for the house?

A. $11,500.00 was the purchase price.

Q. And there was a mortgage for $4,000.00 at that time?

A. No, there was a large loan.

Q. How much was it at the time you bought the house?

A. I guess Mr. Blair had four or $5,000.00 on it.

Q. Do you know who held that mortgage?

A. Mr. Charles Grimes.

Q. Of Tulsa?

A. Yes, sir.

Q. And you made the payments to him?

A. I paid Mr. Grimes one note.

Q. How much?

A. I don't remember.

Q. Do you remember how much those notes were?

A. Not exactly.

Q. Were they monthly notes?

A. No.

Q. How often did you have to pay these notes?
A. I don't remember that.
Q. Do you remember whether those notes the one you paid was a large note or not?
A. No, I don't.
Q. Was it more than a thousand dollars?
[fol. 103] A. I couldn't say that.
Q. I wonder if you have those cancelled checks?
A. I don't know.
Q. And whether or not you have the mortgage which was released?
A. No, sir, it was not released.
Q. There was a $4,000 mortgage still on it?
A. Yes, sir.
Q. When you bought it from Mr. Blair how much of your money went to pay for it?
A. I couldn't say that; my daughter gave me money frequently and she was part owner of this company.
Q. And she would frequently give you money?
A. In 1917 and 1918.
Q. And in 1919 I suppose she gave you money?
A. No, sir, I don't think much in 1919.
Q. 1920?
A. No, sir.
Q. None after 1918 you would say?
A. No, sir, I don't think she gave me any.
Q. How much money would Mr. Gessel give you?
A. I didn't keep account.
Q. Large sums?
A. I don't remember; I never kept track of it.
Q. Do you remember her ever giving you a large check?
A. Well, I just don't remember how much.
Q. You couldn't say how much at any time?
A. No, sir.
Q. When you lived at Broken Arrow you said you were in the grocery business; what was the firm name of that business?
A. C. O. D. Grocery.
Q. It was a general store or just grocery?
A. Grocery.
Q. Did Mr. Chamberlin own that business?
A. He owned the store and we owned the business together.
Q. When you sold out you came away from there with about $5,000?
A. Yes, sir, I think we made about $5,000.
Q. Did you own a farm at Broken Arrow?
A. Yes, sir.
Q. What was that property?
A. On the road out of Broken Arrow.
Q. How much land in that farm?
A. I think about forty-six acres.

Q. From whom did you buy that?
A. Some people by the name—he is a druggist in that town, I don't remember the name—McKeen.
Q. Do you know what his initials are?
A. No, sir.
Q. Did he live at Broken Arrow?
A. Yes, sir.
Q. How much did you pay for that farm?
[fol. 104] A. $9,000.00.
Q. Did you pay for that?
A. Mr. Chamberlin put in some money.
Q. Do you know how much you put in?
A. No, I don't just remember how much.
Q. You don't remember how much you put in?
A. No, sir.
Q. When did you buy that property?
A. In 1917.
Q. And you paid $9,000.00 for it and the three of you bought it?
A. Yes sir.
Q. Was it deeded to you?
A. Yes, sir.
Q. And do you remember whether or not Mrs. Gessel sent you money, Mrs. Leftwich at that time
A. She owed me money at that time.
Q. And she sent you money?
A. I don't know whether she sent it to me or paid it to me.
Q. Mrs. Gessel is your daughter and your present husband's step-daughter?
A. Yes, sir.
Q. How long has Mr. Leftwich been dead?
A. I don't know that he is dead.
Q. He is still living?
A. Yes, sir.
Q. That is your first husband?
A. No, sir.
Q. Your daughter was Mrs. Leftwich?
A. Yes, sir.
Q. I thought she was Miss Leftwich; she was Mrs. Leftwich?
A. Yes, sir.
Q. Now when you came to Tulsa in 1915 that is the time when you bought the Norfork house?
A. That is the time she bought it.
Q. And you came there and lived there?
A. Yes, sir.
Q. Mr. Chamberlin doesn't work does he?
A. No, sir. Mr. Chamberlin doesn't have to work.
Q. He is retired?
A. Yes, sir.
Q. You have a son too?
A. Yes, sir. I have two sons.

Q. Where are they?
A. Well one son is at home and the other lives in Kansas.
Q. One formerly worked for awhile with the Western Rope?
A. Yes, sir.
Q. You don't know about any trouble he ever had with the Western Rope?
A. No, sir, I don't.
Q. You have never heard of that?
A. No, sir, I didn't hear it.
Q. There were two houses on Xantus Avenue?
A. Yes, sir.
Q. And were both of these properties deeded to you?
[fol. 105] A. Yes, sir.
Q. They were taken in your name. Were they purchased in 1918?
A. I think so.
Q. Was that after you came to Tulsa?
A. I believe if was; I am not sure about that; it may have been 1917; I am not sure about that.
Q. Don't you remember with respect to when you came?
A. Yes, sir, I remember when I came.
Q. Do you remember whether it was before or after?
A. No, sir, I can't; I think it was 1918.
Q. Was one #420?
A. Yes, sir.
Q. And the other 545?
A. 545.
Q. Taking the first of these houses the one at #420 Xanthus that house was bought you said said for how much?
A. I think about $1,700.00.
Q. And do you remember who it was you bought that property from?
A. It was bought on a contract I think from a man named Snow.
Q. And then you made some improvements to that property and rented it?
A. Yes, sir.
Q. You never lived in that property?
A. No, sir.
Q. And you later on sold the property to whom?
A. To a man named Houston.
Q. And the money for that was paid to you?
A. Yes, sir.
Q. You got that money and that was part of the money that went into your house?
A. Yes, sir.
Q. When was that sale?
A. Early spring of 1920.
Q. Was that before or after you bought the lot out on the Jenks road?
A. That was afterwards, 1920, still owed some debts on the house.

Q. How much?
A. I just don't remember.
Q. The other house was #545 Xanthus?
A. Yes, sir.
Q. Did you say to whom that property was deeded?
A. It was deeded to me.
Q. It was deeded to you?
A. It was on contract; when the contract price was paid up it was deeded to me by Mr. Snow.
Q. And you don't recall what year that was whether it was 1917 or 1918?
A. It was 1920.
Q. I mean when you bought it?
A. No, I don't.
Q. Could you fix it as early 1918 or late 1917?
A. No, I couldn't.
Q. Was that the first house you bought on Xanthus?
A. I couldn't tell which one was the first.
[fol. 106] Q. Were they both about the same time?
A. No, I don't even know that. She loaned some money to somebody that bought that house at #545 and she had to take it over; she loaned it to somebody that bought it and he couldn't pay up and she turned it over to me.
Q. Do you remember whether you made the payments?
A. I made the payments after she turned it over to me.
Q. Do you know when she deeded it to you?
A. No, sir. I think from the time I came to Tulsa I looked after it.
Q. After you came to Tulsa you looked after this property at #545 Xanthus?
A. Yes, sir.
Q. Do you know from whom that was purchased?
A. From Adams & Walker.
Q. Are they real estate dealers?
A. Yes, sir.
Q. Did they own the property or represent some one else?
A. I don't know.
Q. You don't know who the property was sold to?
A. No.
Q. Did you transact that business?
A. No.
Q. You simply deeded it to somebody on her instructions?
A. No, it was deeded to me and I sold it.
Q. Who did you sell it to?
A. Man named Foster.
Q. When?
A. Spring of 1920.
Q. Was that before or after the sale of #525?
A. Just about the same time; sold it because we had to have some money to pay out on the place.

Q. This last sale was made to Foster?
A. Yes, sir, man named Foster.
Q. And the money you got from that you deposited in your account in the American National?
A. Yes, sir.
Q. And paid it out on your home?
A. Paid it out.
Q. Do you own an automobile?
A. No, sir, Mr. Chamberlin owns one.
Q. Did you ever buy an automobile?
A. No, sir.
Q. Did you own a Stutz car at one time?
A. No, sir.
Q. Did your daughter?
A. She traded for one I think.
Q. Do you remember when that was?
A. 1916 or 1917; she bought a secondhand car and kept trading until she got a Stutz.
Q. That was all her own transaction?
A. Yes, sir.
Q. You had no interest?
A. I don't remember having anything to do with that at all.
Q. This farm you owned at Broken Arrow, can you fix the time you sold that farm?
A. In the spring of 1920, about April I think.
[fol. 107] Q. Who bought that property?
A. Man named Hanks.
Q. You deeded it to him?
A. Yes, sir.
Q. How much did you get for that property?
A. $13,000.00.
Q. Had you improved that property after you bought it?
A. Yes, some.
Q. What had you done to it?
A. Painted it and repaired it.
Q. Build a house or barn?
A. No, sir.
Q. Fences?
A. No, sir.
Q. Then you hadn't spent any substantial amount of money on that house?
A. Not a great lot.
Q. Did you rent that farm?
A. Yes, sir.
Q. You sold that early in 1920?
A. Yes, sir.
Q. Who bought the store from you in Broken Arrow?
A. Man named Dalton.
Q. What did he pay?
A. $2,000.00.

Q. Who bought the real estate?
A. Charles A. Wade.
Q. What did he pay for it?
A. $1,700.
Q. Was there any mortgage on the store?
A. No, sir.
Q. On the house?
A. No, sir.
Q. Did you ever owe any money on the farm?
A. No, sir. I raised some money once for my daughter.
Q. You borrowed some money on the farm?
A. Yes, sir.
Q. Turned it over to your daughter?
A. Yes, sir.
Q. Did she ever pay that back?
A. She did.
Q. Mrs. Chamberlin I wonder if you can't tell us a little more accurately the date of the sale of that portion of the property on the Jenks Road which you sold off?
A. I can't tell you the date, some time that spring.
Q. 1920?
A. 1919.
Q. You gave deeds to that property?
A. Certainly.
Q. And I suppose the deeds would fix the date?
A. Certainly.
Q. And immediately after getting that money you paid it to Mr. Eysenbaugh [Eysenbach]?
A. I don't say that I did; I don't remember.
Q. Can you fix the time in any way on which you made the final payment to Mr. Eysenbaugh?
A. No, sir.
Q. Do you think that was before you sold any of the property off?
A. No, sir, I don't think so.
Q. You think you paid for all of it before you sold it?
A. No, sir.
Q. You think you sold part of it before you paid for it?
A. I can't tell you when I paid the balance.
Q. You ought to be able to fix it with reference to the balance.
A. The notes ran $500 a month.
[fol. 108] Q. You mean the notes on the lot?
A. Yes, sir.
Q. Did you sign those notes?
A. Yes, sir.
Q. And those notes were given to Mr. Eysenbaugh?
A. Yes, sir, the notes were given to Mr. Eysenbaugh with a mortgage on this land and so I don't know when it was paid.
Q. When they were paid did you get them back?
A. Yes, sir.
Q. Have you got them?
A. I don't know.

Q. I wonder if you will make a search?

A. I may have. I think Mr. Eysenbaugh can tell you who gave the notes; Mr. Blair can I am sure, he made the notes out.

Q. You made the sale of part of it to Mildred L. Crume for $3,000?

A. Yes, sir.

Q. And if the deeds are dated May 13, 1919, you would say that is about the time of the sale?

A. Of this acreage it must be.

Q. And further sale was made to Virginia Childs and deed dated May 6, 1919, for $2,250.00, you would say that was the transaction?

A. I would think so, must be.

Q. Mrs. Chamberlin I hand you a check which has been marked Trustee's Exhibit #14 and I will ask you if you ever saw that check before?

A. I don't remember it.

Q. You didn't give that check to Mr. Eysenbaugh?

A. I might.

Q. Wouldn't you remember a transaction involving $5,000?

A. I don't even remember when that was paid.

Q. As a matter of fact that was the final payment on your lot?

A. Must have been.

Q. And then when you testified that there were notes given you were mistaken?

A. No, sir, I was not mistaken; there were notes given. I might have given her the money and she might have paid it.

Q. Would you have given it to her in check or cash?

A. I might have given it to her in check.

Q. Did you ever handle cash in large amounts?

A. Not very often.

Q. Did you handle as much as $5,000 in cash?

A. Not of late years.

Q. You would remember it wouldn't you?

A. I don't know whether I would or not. I don't remember when that was paid, I never did remember it.

Q. Yet this check must have been the payment?

A. It must have been.

Q. I hand you check marked Trustee's Exhibit #8 and ask you of you ever saw that check?

A. I can't remember.

[fol. 109] Q. That check is dated November 17, 1919, about the time you bought the lot, isn't it?

A. 1919, no, sir.

Q. That was about the time—that was during the time the house was being constructed?

A. Yes, sir.

Q. This was not final?

A. No, sir, we paid into 1920.

Q. But you don't remember giving Mr. Blair this check?

A. I don't remember; I might have for I gave him lots of checks.

Q. But ordinarily you gave him checks drawn on your own account?

A. Well, I might have given him some checks from Mr. Chamberlin.

Q. Where did Mr. Chamberlin carry his account?

A. At the Liberty National.

Q. And do you know how much Mr. Chamberlin put into this house?

A. Approximately $5,000.00

Q. $5,000.00 of his money?

A. Yes, sir.

Q. And I understand you to say Mrs. Leftwich, during the time this house was being constructed and when the lot was bought, did not give you any money?

A. She might have, yes, sir.

Q. Do you remember whether or not she did?

A. I can't say.

Q. Would you say then she didn't have any money in that house?

A. I say she hasn't got any money in that house now.

Q. None at all?

A. No, sir,

Q. I hand you check marked Trustee's Exhibit #10 and I will ask you if you ever saw that check?

A. Yes, sir, that is my check?

Q. Where did you get that check?

A. I got it from her.

Q. What was that?

A. Well, I don't know. She gave it to me; I don't know where she got it, or anything about it.

Q. She simply gave that to you?

A. She gave it to me.

Q. What did you do with the money?

A. I don't know, probably put it on deposit in the bank.

Q. This money was deposited in the bank?

A. I think so; my endorsement is on the back.

Q. Do you know where it was deposited?

A. I couldn't say.

Q. It bears the stanp of the Producers Bank?

A. Well, it must be the Producers Bank, then.

Q. This check of $3,555.80, Trustee's Exhibit #8, that was a payment on account of the house?

A. I don't think so.

[fol. 110] Q. What do you think that was for?

A. I don't know.

Q. Did you have any other business relations with Mr. Blair at that time?

A. No, I didn't but Mr. Blair was building a place for Mr. Gessel at that time, at the same time we were building ours.

Q. How do you know that?

A. Well, I know it. He was working at that house the same time he was working at ours.

Q. Well, Mrs. Chamberlin, if Mr. Blair's books show that this was credited as a payment on account of the construction of the house on the Jencks road, would you say that that was a payment then?

A. I wouldn't say, no.

Mr. Martin: I object to that; it is an assumption.

Mr. Mitchell: We will furnish the evidence.

The Referee: With that assurance the objection will be overruled.

Q. You would still say it was not?

A. I couldn't say. I don't know. I think Mr. Blair was paid mostly by checks from myself.

Q. Do you remember, Mrs. Chamberlin, of any other checks given you by Mrs. Leftwich during the period you were building this house? You have said this check which is marked Trustee's Exhibit #10 for $3,740.97 was given to you by your daughter?

A. It must have been, because it looks like that is my signature on it.

Q. But you don't remember it?

A. No, sir, I don't remember it.

Q. Do you recall now any other checks that were given to you by your daughter during that period?

A. No, sir, I don't.

Q. Well, would you say that she didn't give you any others?

A. She paid her board to me.

Q. Did she pay board?

A. Yes, sir.

Q. How much board?

A. Well, some times $100.00 a month and some times $150.00.

Q. No contract, she simply gave you money from time to time?

A. It was understood it was for her board.

Q. This other money she gave you from time to time in large sums during the years 1917 and 1918 you didn't consider that for board, that was a gift?

A. That was a gift.

Q. I hand you a check now marked Trustee's Exhibit #11 for $2,566.50 and ask you if you ever saw that before?

A. Well, she deposited this to my credit; I don't know what for; she deposited that.

[fol. 111] Q. You never saw that?

A. I can't say that I ever saw it.

Q. You don't know what it was for?

A. No, sir.

Q. But that was deposited to your credit?

A. It looks like it was; it says so on the back of it.

Q. You don't recall any other checks that were given you during the period that your house was being built out there by Mrs. Gessell, you wouldn't say there were not others?

A. I don't know.

Q. I hand you Trustee's Exhibit #12 and ask you what that is?

A. That is my signature; I don't know what it is from or anything about it.

Q. Did you ever see it before?

A. I must have had it.

Q. Do you know what you did with the money?

A. I deposited it.

Q. But after you deposited it do you know what you did with it?

A. No, I don't.

Q. Trustee's Exhibit #9, did you ever see that check before, Mrs. Chamberlin?

A. No, sir.

Q. Do you know what that was for?

A. No, sir, I do not.

Q. You have no knowledge whatever with respect to it?

A. No, sir, I know nothing about it.

Q. Mrs. Chamberlin, the house out on the Jenks road stands in your name at this time and this money you have told about that went into the purchase of the ground and the payment of the bills for the construction of the house and material. What other property have you at this time?

A. I haven't any other property.

Q. Nothing else?

A. Nothing.

Q. No notes, mortgages, real estate?

A. No real estate.

Q. Nothing of that kind, no bonds?

A. Might have a few bonds.

Q. What kind?

A. Liberty bonds.

Q. How many would you say?

A. I just don't know.

Q. Can you tell me substantially how many?

A. Five or six hundred dollars' worth.

Q. And what other property have you of any kind besides five or $600.00 Liberty bonds?

A. I haven't any other property.

Q. Everything went into this home?

A. Yes, sir.

Q. Have you any money loaned out at all?

A. Yes, sir.

Q. Represented by notes and with land as security?

A. No, sir, I don't know about the land; I haven't negotiated the loans.

Q. But you have some money loaned out on notes?

A. I have.

Q. Who handled the transaction?

A. Exchange Trust Company.

[fol. 112] Q. How much does that aomunt to?

A. About $10,000.00

Q. That is your money, of course?

A. Yes,sir.

Q. Is that part of the money that came to you from your daughter?
A. No, sir, that came from the farm, part of it.
Q. The Broken Arrow farm?
A. Yes, sir.
Q. Then that money didn't go into the house?
A. It was sold too late; I had the house almost paid for.
Q. Your daughter had an interest in that farm?
A. Not when I sold it.
Q. Had you paid her her interest?
A. Yes, sir.
Q. How much did you pay her?
A. I loaned her money from time to time.
Q. How much did you pay her?
A. I don't remember, but she had no claim.
Q. She had released any claim on the farm?
A. She never had any claim.
Q. She owned an interest in the farm?
A. Yes, but not of right herself.
Q. When did she give up her interest?
A. When I gave her some money for it.
Q. When was that?
A. After I sold it.
Q. Oh, you gave her some money after you sold it?
A. Yes, sir.
Q. How much?
A. At different times.
Q. Can you fix the amount you gave her at any time?
A. Yes, sir, four or five thousand dollars.
Q. When was that?
A. At different times.
Q. Out of the proceeds of this farm?
A. I don't know; out of something.
Q. But when you sold the farm you got a certain amount of money?
A. Yes, she didn't get any of that.
Q. And none of that went in the house?
A. No, sir, that money from the farm I think the place was all cleared up.
Q. And you got $13,000 in cash?
A. Yes, sir.
Q. What did you do with that money?
A. I used it to live on, part of it.
Q. And the rest of it?
A. I told you.
Q. And how much are those notes?
A. $10,000.00.
Q. And was your husband interested in that farm?
A. Yes, sir.
Q. He got none of the proceeds, either?
A. Yes, he did.
Q. How much did he get?

A. Well, he had given it to me to put into this home.
Q. You gave it back to him out of this money?
A. No.
Q. When did you give it back?
A. I didn't give it back; he has it in the home.
[fol. 113] Q. I thought you said the home was all paid for before you sold this farm?
A. All but about $3,000.00.
Q. So that $3,000.00 came from the farm?
A. I don't just remember when I got the money from the farm.
Q. Mrs. Chamberlin, when you bought this land on which this house was built and paid $375.00, and then a thousand dollars, and then $3,000.00, and then your check here for $5,060.00, that would come pretty close to paying the purchase price of that land?
A. What do you mean? I don't understand what you mean.
Q. I mean after you paid $375.00 to Mr. Blair——
A. Yes.
Q. And then gave him $1,000, which you have testified you did.
A. Yes, sir.
Q. Then gave him $3,000?
A. Yes, sir.
Q. Then Mr. Eysenbach got a check for $5,060, which I have shown you?
A. Yes, sir.
Q. After he got all that money in, practically all the price of the land was paid?
A. Approximately, it must have been.
Q. If that is the case, what did you do with the money you got out of the land you sold out on the Jenks road?
A. I put it on the home; I think that money was paid to Mr. Eysenbach.
Q. For what?
A. For the land.
Q. Then what happened with the money?
A. That is it.
Q. You mean Eysenbach got the money from these people you sold it to?
A. No, sir, I think probably I must have given it to my daughter and she paid it.
Q. But you do remember the transaction where you sold part of this land?
A. Yes, sir.
Q. And you don't know what you did with that money?
A. I know it went into the property.
Q. You wouldn't call it the same money as this?
A. I can't say.
Q. Well, do you say it isn't?
A. I don't know.

Mr. Marin: I object as a repetition.
The Referee: Overruled.

Q. Mrs. Chamberlin, if you will bring those checks.
A. I don't know whether I have them or not.
Q. If you can find them and the notes which you mentioned, if you have them and your statements of your bank accounts tomorrow morning, we will excuse the witness until that time and continue in the morning.

[fol. 114] Mr. Martin: I want to ask the witness one question.

Examination by Mr. Martin:

Q. Mrs. Chamberlin, did you sell the real property in which the store was conducted at Broken Arrow?
A. Yes, sir.
Q. What did you get for that?
A. $2,000.
Q. Then you sold the store, too?
A. You mean the stock?
Q. You sold the stock?
A. Yes.
Q. What did you get for that?
A. Something like $3,000.00
Q. And when you said you sold the store for $2,000; you meant the store building?
A. Yes, sir.
Q. And you sold the stock separately?
A. Yes, sir.
Q. To a different party?
A. Yes, sir.

Examination by Mr. Mitchell.

Q. Who did you sell the stock to?
A. Man named Foster.
Q. And who did you sell the building to?
A. Man named Dalton.
Q. Who did you buy the building from?
A. Mr. Chamberlin bought the building in 1907.
Q. And owned it ever since?
A. Yes, sir.

Examination by Mr. Kates:

Q. When was the date of that sale?
A. 1919.
Q. What time of the year?
A. Spring.
Q. What month?
A. Couldn't say for sure.
Q. Was that before or after you bought the property from Mr. Eysenbach?
A. Just about the time, some time during that year.

Q. How long did you live in Tulsa before you bought the land from Mr. Eysenbach?
A. About a year.
Q. Who was running the store in Broken Arrow?
A. We rented the store. We run that store from 1912 until 1914, the fall of 1914, and after that time we rented it; sold the store and everything and rented it.
Q. You sold the stock in 1914 and rented the building?
A. Yes, sir.
Q. Then you got $3,000 for the stock in 1914?
A. Yes, sir, 1914 or 1915, and we had done business there for two years.
Q. And you sold the building in 1919?
A. Yes, sir.
Q. The only money you got in 1919 was $2,000 for the building?
A. That is it, yes, sir.

[fol. 115] Examination by Mr. West:

Q. I think you stated the name of the man you sold the farm to down there?
A. Man named Hanks.

Examination by Mr. Kates:

Q. What did you do with the money from the sale of the stock?
A. Kept it.
Q. How did you invest it?
A. My daughter used my money most of the time.
Q. Do you know how she invested it?
A. No, sir.
Q. You had no track of the money from 1914 on?
A. Yes, I do; she had it.
Q. Do you know where she had it?
A. In the Central National Bank.
Q. In the form of deposit for three years?
A. Yes, sir.
Q. She had it in certificates of deposit?
A. She loaned it out.
Q. To whom?
A. I don't know.
Q. Did she loan it to the bank?
A. No, sir, to the parties.
Q. You say it was in the Central National Bank—do you mean they negotiated the loan for her?
A. No, sir, she made loans herself.
Q. You said the $3,000.00 you got from the stock was in the Central National Bank?
A. The $3,000.00 we divided between us and also the profits on that stock.

Q. That is, you each got $1,500.00 of the $3,000.00?
A. Yes, sir.
Q. What did you do with the $1,500 you had?
A. I put it with my other money.
Q. Where did you put it?
A. She invested it different times.
Q. Who?
A. My daughter; she had about $10,000.00.
Q. I mean the $3,000 you got from the sale of the stock?
A. No, my husband had $1,500 of it.
Q. What did he do with it?
A. He had it in the bank at Broken Arrow, I presume.
Q. The $1,500.00 that you had that you got in 1914, what did you do with that?
A. I think she had it and used it.
Q. Did you turn that over to Mrs. Leftwich?
A. She used it.
Q. You gave it to her?
A. No, sir.
Q. You loaned it to her?
A. Yes, sir.
Q. Did you keep any track of what she did with that money?
A. She did.
[fol. 116] Q. Did you?
A. I think she was capable of keeping track of it.
Q. Did you ask her in what she invested it?
A. I knew all about her business.
Q. In what did she invest it?
A. I am not going to tell; you will have to ask her.
Q. Well, you know it, don't you?
A. Yes, I know it.

Mr. Kates: I ask the witness to answer.
Mr. Martin: That is calling for hearsay testimony.

A. Well, she loaned it and made good money out of it.

Mr. Kates: I think we are entitled to ask the witness.
The Referee: Do you know of your own knowledge, Mrs. Chamberlin?
A. Not of my own knowledge.

The Referee: Just what she told you?
A. Yes, sir.

Q. It was your money?
A. Yes, sir.
Q. Did she pay you any interest?
A. No, sir, she gave me presents and we used this money between us.
Q. Did she pay you any board?
A. She didn't live with me at that time.
Q. Was she married to Mr. Leftwich at the time?

A. No, sir.
Q. She had been divorced?
A. Yes, sir.
Q. Did she ever make return of that money?
A. Yes, sir, she had about $10,000.00.
Q. I am speaking about the $10,000.00.
A. It was put in with the rest of my savings.
Q. Did she have all of your savings?
A. Yes, sir, she used my money.
Q. And you didn't use it?
A. Not any, hardly.
Q. You turned all of your money over to Mrs. Leftwich in 1914?
A. She had my money and we both had it.
Q. Who controlled the money?
A. Well, she did, mostly.
Q. Do you know what bank it was in?
A. She had it in the Central, I think.
Q. Did you turn any money over to her in 1914 when you turned this $1,500.00 over?
A. She had been using my money ever since I had any.
Q. You say you sold the store in the spring of 1914?
A. No, sir.
Q. When was it?
A. In the fall.
Q. And you moved to Tulsa?
A. No, sir, we lived in Broken Arrow.
[fol. 117] Q. Did you keep the money in the bank at Broken Arrow at that time?
A. She had it. She was to our house every week.
Q. Did you turn the $1,500.00 over to her at the time you sold the stock, or later?
A. She had some before that.
Q. I am speaking of the $1,500.00 you got from the sale of the stock?
A. I don't remember just what I did with it.
Q. Did you keep it in the bank at Broken Arrow?
A. No, sir, she kept it in Tulsa.
Q. When the money was paid over for the sale of this $3,000 stock was it paid over $1,500.00 to you?
A. No, sir, it was paid to Mr. Chamberlin.
Q. Do you know how it was paid to him?
A. He got a house as part payment.
Q. What house was that?
A. A house in Okmulgee.
Q. And how much was that credited on the sale?
A. I thing $1,300.00.
Q. So there was $1,700.00 left?
A. He took the house.
Q. And did he give you a check for $1,500.00?
A. Yes, sir, I think he did.

Q. Do you know whether that was on a bank in Broken Arrow?
A. I think it was.
Q. Do you know what bank?
A. I think it must have been the Arkansas Valley Bank, that is where we did business in the store.
Q. And that is where he kept his deposits?
A. We kept the deposits for the grocery store there.
Q. So the only cash that came to you was $1,700.00?
A. We made the profits for two years.
Q. I am speaking of the sale of the stock; you got $1,700.00 in cash?
A. No, I got about $1,500.00.
Q. Your husband did?
A. I think so.
Q. Do you know?
A. I am not positive as to the amount.

Mr. Martin: Objected to as a repetition and frivilous.
The Referee: Overruled.

(Witness excused.)

And thereupon an adjournment was taken until *until* September 16, 1921.

And thereafter the hearing was resumed at nine-thirty A. M., September 16, 1921, and the following proceedings were had:

JOHN T. BLAIR, produced, sworn and examined as a witness at the time and place above mentioned, testified as follows:

[fol. 118] Examination by Mr. Kates:

Q. State your name to the court?
A. John T. Blair.
Q. What is your business?
A. Architect and builder.
Q. Have you been engaged in the business of building in Tulsa for some years?
A. Yes, sir.
Q. I will ask you whether, in the spring and summer of 1919, you built a house on the Jenks road for Agnes C. Leftwich or Anna B. Chamberlin?
A. Yes, sir.
Q. Who was that house built for?
A. Well, it was my understanding it was Mrs. Chamberlin.
Q. Mrs. Chamberlin?
A. Yes, sir.
Q. Can you show from your books the dates and the amounts of the payments that were made to you on that house?
A. Yes, sir.

Q. Will you do that?
A. Yes, sir.
Q. Have you your books here?
A. Yes, sir.
Q. That is the regular book you kept for payments?
A. The book that was used at that time, yes.
Q. Will you turn to your book and show when the first payment was made on that house?
A. Yes, sir.
Q. Before you answer that question, what was the nature of the contract you had for the building of that house; was it for a certain sum, or time and material?
A. Time and material, percentage job.
Q. And the payments were made as the estimates were presented for labor, time and material used?
A. Yes, sir.
Q. You may proceed to show the time of the payments.
A. The first check was that on May 24th, 1919, for $1,477.84.
Q. Do you remember who made that payment?
A. Mrs. Chamberlin.
Q. Do you remember how that was paid, Mr. Blair?
A. No, I don't; it just says here, "by check," and I can't remember back that far.
Q. The same thing would be true of all the items?
A. Yes.
Q. Do you know whether Mrs. Leftwich made any payments?
A. I remember her making one, and possibly two. I remember one time her mother was out of town.
Q. You will call that?
A. Yes, sir, when I come to it.
Q. What is the next payment and for how much?
A. June 2nd.
Q. What year?
A. 1919, $1052.88.
Q. And the date and month of the next payment; just read them, the dates and the amounts and how much paid and if you know [fol. 119] at the time, by whom?
A. This one here, Mrs. Chamberlin was going to be out of town and she asked me approximately what the payment would be, and I gave her approximately $750.00, but it figured up more; I think the check was $750.00 and the estimate $802.88.
Q. What date?
A. June 13th. The next check was June 23rd, $659.87. The next check was June 30th, $1293.43. The next one seems to be a check for more than the estimate, which was for $2,000.00, and the estimate was $1895.93; that was perhaps at a time she was going to be away. That check seems to be on July 7th; it was $2,000.00 here and the estimate at that period $1825.96.

Mr. Mitchell: Was that check given to you by Mrs. Gessel or Mrs. Chamberlin?

A. Well, now, I don't remember that particular check.

Mr. Mitchell: Do you recall what bank those checks were drawn on?

A. I think the majority on the American National, but I am not positive.

July 14	$940.20
July 21	1,301.34
July 28	2,318.00
August 4	1,100.56
August 13	353.55
August 19	1,219.51
August 25	611.83
September 2	393.80
September 8	1,154.55
September 15	1,804.83
September 22	405.68
September 29	418.80
October 6	813.50
October 13	266.13
October 28	1,294.26
November 3	222.85
November 11	1,003.70
November 17	3,555.80

Q. That check for $355.80, do you remember anything about that, whether it was a check or cashier's check, or what?

A. No, I don't.

Q. You got that amount of money on that date and credited it to her account?

A. Yes, sir.

Q. Who gave you that, if you remember?

A. It seems to me that somebody left that check down at the office; I don't remember who it was. That is my recollection at this time. [fol. 120] On December 8th, $3,000.00. This check of March 22nd I got from Mrs. Leftwich.

Q. How much was it?

A. $500.00.

Q. What year?

A. 1920. January 9, 1920, I received $1500.00; February 2nd, $1,000.00; May 3rd, $60.72, which closed the account.

Q. Have you got that totaled there?

A. No, I haven't.

Q. Now, Mr. Blair, the sum of those checks would represent the cost of the house you built for Mrs. Chamberlin, or Mrs. Gessel, on the Jenks road?

A. Everything except the window shades and chandeliers.

Q. Did that include concrete work on walks and drives?

A. No, they were not put in until the following spring. I put the concrete work in from the garage past the west line of the house.

Q. That is up to the house line?

A. Yes, sir.
Q. But not out to the street?
A. No, sir.
Q. From the house to the garage?
A. Yes, sir.
Q. Do these payments include the cost of the garage?
A. Yes, sir.
Q. The cost of the water system?
A. Yes, sir.
Q. The cost of the gas and electric connections and fixtures?
A. No, sir, not the electrical fixtures.
Q. Does it include the decorations?
A. Yes, sir.
Q. It includes the house complete except the window shades and electrical fixtures?
A. That is my recollection; and there was some yard grading I did not do.
Q. Does not include the shrubbery and sodding?
A. No, sir.
Q. Does it include the walk from the house out to the road?
A. No, sir.
Q. Mr. Blair, you did some work for Mr. B. M. Gessel on his residence on Madison Avenue?
A. Yes, sir.
Q. When was that done?
A. The fall of 1919.

Mr. West: Before going into that I want to ask you about the payment of July 7, 1919, $2,000.00; we want to know whether you know who gave you that and how you got it?

A. No, I couldn't tell you exactly; the only think I can tell you there were times when Mrs. Chamberlin was going to be out of town and she would ask me to tell her about what the estimate would be and she would leave a check or make arrangements so I could get the money when the estimates came due. I would just credit her with the amount she gave me and carry the balance.

[fol. 121] Q. In regard to the work done for B. M. Gessel on his residence on Madison Avenue, can you tell from your books the dates and the amounts of the payments made by him for that work?
A. Yes, sir.
Q. That was the building of a room?
A. Yes, sir; building of a gymnasium and shower bath.
Q. That was all that was done?
A. Yes, sir.
Q. No work on the garage?
A. No, I don't think so.
Q. Will you turn to the books and show the dates and amounts of the payment received by you from Mr. Gessel for that work?
A. The work was commenced July 18, 1919.
Q. Commenced July 18, 1919?
A. Yes, sir, the first check was received August 11, 1919.

Q. For how much?
A. $1,174.12.
Q. Now, when was the next check received and for how much?

A.—August 25th..... $633.60
September 9..... 380.35
September 22..... 972.49
October 27..... 788.08
January 10, 1920..... 2,256.07

Now, there was a credit for material I took away from there of $17.99; I don't know whether that was taken off or not.
Q. Was that the last check you received?
A. Yes, sir.
Q. The total of those checks would represent the cost to him on that addition to Mr. Gessel's house?
A. Yes, sir.
Q. Did that include all the work that was done?
A. It included all the work I did there.
Q. Did you do the decorating job?
A. The house was decorated when he bought it; I decorated this room.
Q. Included the decoration and lighting fixtures?
A. Yes, sir.
Q. It included the improvement complete?
A. Yes, sir.
Q. So when you were done the thing was done?
A. Yes, sir.
Q. Those checks were paid to you by whom?
A. Well, I would go up to the Western Rope office and announce what I wanted and somebody would bring me out a check. I don't remember who gave it to me.
Q. Those checks were all payable to you personally, J. T. Blair?
A. I presume so; that is the way my business is run.
Q. It is the construction work of Blair Brothers, but the checks are drawn to J. T. Blair?
A. Yes, sir, because I keep the books. But often the commission accounts come to Blair Brothers.
Q. Those were checks of the Western Rope and not cashier's checks?
A. I don't remember any cashier's checks.
[fol. 122] Q. You would go and get a check at the Western Rope office payable to John T. Blair and you would take it down and deposit it?
A. Yes, sir.
Q. I will hand you Trustee's Exhibit #8, Mr. Blair, being a cashier's check of the American National Bank, and ask you if you have seen that check before and the endorsement on it?
A. That is endorsed by the lady handling the banking, that is my sister-in-law's signature.
Q. She at that time was handling the books of the company?
A. Yes, sir.

Q. And had authority to endorse these checks for deposit?
A. Yes, sir.

Q. That cashier's check for $3,555.80, does that reflect as to whether you received that amount of money in that form?
A. Yes, I received that.

Q. That was given to you—do you remember whether that was given to you by Mrs. Leftwich or Mrs. Chamberlin?
A. I think that was left at my office.

Q. Had you rendered a statement for that amount?
A. No, along about November when I was getting close to finishing up Mrs. Chamberlin asked me to make a statement of about what the total amount would be and I made her a statement—well, it run, I think, nine or $10,000.00 balance due.

Q. And this is one of the payments received on that estimate?
A. Yes, sir, that was after the carpenter and brick work was done.

Q. You received that money on that check and deposited it to your account and credited it on the Chamberlin house?
A. Yes, sir.

Q. And in the final settlement it showed that you received that check on that date in that amount?
A. I can't see that date.

Q. Well it is marked on the back "paid 11-18-19."
A. 11-17 I have got it. I guess that was deposited the day after November 17, 1919.

Q. Well the mark on this check shows the date of the clearance through the American National. In what bank did you deposit that?
A. In the Exchange National.

Q. On the 17th?
A. No our deposit slips would generally be a day later.

Q. Then you would show that as having been deposited on the 18th of November, 1919?
A. That is about right.

Q. I will hand you Trustee's Exhibit #9 with the endorsement on the back and ask you if you have seen that before?
A. That is my signature.

[fol. 123] Q. The amount of that is $2,000.00.
A. I presume that is the one I got in July.

Q. It is marked "Paid July 9, 1919."
A. I had it here the 7th; I got it the 7th.

Q. This was deposited in the Exchange National so it was marked paid by the American National a day or so after the deposit in the Exchange National?
A. Yes, sir.

Q. This endorsement on the back is your own signature?
A. Yes, sir.

Q. And you received that money on this Chamberlin house?
A. Yes, sir.

Q. Had you rendered an estimate for this amount to Mrs. Chamberlin prior to that time?
A. I think I gave her an approximate estimate; I think they were

going to be out of town because that would be the only time I would overdraw. I would make it on the basis of full days and rainy weather might cut the estimate down.

Q. Does this refresh your recollection whether you asked Mrs. Chamberlin about that time for $2,000?

A. She asked me every time she was going out of town what my estimate would be.

Q. So it is your recollection you asked her for this money before that time and she gave it to you?

A. Yes, sir.

Q. And this was received and credited on that house?

A. Yes, sir.

Q. And in the account you finally rendered to her it showed this credit on that date?

A. Yes, sir.

Q. Turn to your payment of August 12, 1919, see if you received any payment from her about that time.

A. August 13th I have $355.55.

Q. And thereafter in August what did you receive?

A. I received on the 19th $1,215.51.

Q. Did you receive any other payments in August?

A. Yes, sir, one about the 25th $611.83 and I received one August 4th $1,100.56.

Q. Now turn to payment of April, 1919.

A. I didn't have no account against her at that time, not on that house; I don't know any other account that I would have had.

Q. Mr. Blair you remember that in the spring of 1919 Mrs. A. C. Leftwich purchased a house from Blair Brothers on Norfork Avenue?

A. In the spring of 1919.

Q. In the year 1918?

A. Yes.

Q. Do you remember when that was?

A. Well the first of the year, I can't tell exactly, I think January or February, the first part of the year.

[fol. 124] Q. What was the amount of that purchase by Mrs. Leftwich?

A. My recollection about $11,500.00.

Q. Do you remember how that money was paid to you?

A. No, I don't.

Q. You didn't handle that?

A. No, I don't handle the real estate end of it. It wouldn't show in this book.

Q. Mr. Blair except for the building of this house on the Jenks Road did you ever have any other dealings with Mrs. Anna B. Chamberlin, business dealings?

A. No, I can't say that I did; I was driving out there some time afterwards and showed a man her place; they wanted to buy a place.

Q. Whatever dealings you had were in reference to this house?

A. Yes, sir.

Q. No other money was paid to you?

A. Not to me unless it was paid to Blair Brothers.

Q. I mean so far as you know?
A. No.

Mr. Kates: That is all.

Examination by Mr. Martin:

Q. Mr. Blair I understood you to say that your contract, your negotiations leading up to this contract, were all with Mrs. Chamberlin?

A. Yes, sir.

Q. Counsel several times has referred to this transaction as building a house for Mrs. Leftwich, you didn't have any such transaction did you?

A. No, sir.

Q. Did you act, or your firm act, as the agent in the sale of the land upon which this improvement was made when it was purchased by Mrs. Chamberlin?

A. Yes, sir my brother Joe handled that.

Q. You didn't handle that?

A. No, sir.

Q. Do you know whether your firm did negotiate the sale of that land to Mrs. Chamberlin?

A. I think so, yes, sir.

Q. Do you know whether your firm collected the purchase price from her?

A. No, I couldn't say that.

Q. You don't know about that?

A. No, sir.

Q. And you haven't made any computation of the aggregate cost of the building that you constructed?

A. Yes, sir, I made it and turned it over to Mrs. Chamberlin.

Q. That was your original estimate?

A. I gave an approximate estimate when I started and then a final estimate of what it cost and she has that with the receipted bills.

[fol. 125] Q. That could be ascertained by adding the checks that you have testified to here?

A. Yes, sir.

Q. You have no recollection of ever having received the check of Mrs. Leftwich for any of these payments?

A. Yes, I remember one in particular when her mother was out of town.

Q. Was that a check that was drawn upon her account or upon her mother's account by her?

A. I don't remember that. I remember her giving me the check.

Q. Do you know whether all the checks that you received from Mrs. Chamberlin were drawn on the same bank?

A. I don't believe they were all on the same bank, but I wouldn't be positive. It is too long to remember.

Mr. Martin: That is all.

(Witness excused.)

W. C. CRAIG, recalled for further examination, testified as follows:

Examination by Mr. de Meules:

Q. Mr. Craig you just heard the testimony of Mr. John T. Blair with reference to the building of a room and other improvements at the home of Mr. Gessel, and you heard him detail the payments received by him on account of that work?

A. I did.

Q. Did you check those payments with the private account of Mr. B. M. Gessel on the books of the Western Rope as they were read?

A. I checked them on the report, the transcript.

Q. Which you made?

A. Yes, sir.

Q. What do you say as to whether or not each of the payments as detailed by Mr. Blair for improvements on Ben Gessel's house appear in the private account of Ben Gessel?

A. They do.

Q. Every one?

A. Every one.

Q. On the dates testified to by Mr. Blair?

A. On the dates or within a day.

Q. And of the exact amounts?

A. The exact amounts and all checks show as being payable to J. T. Blair.

The Referee: As shown by Trustee's Exhibit——

Q. Page what of the exhibit?

A. Exhibit 15, on several pages, pages 55 and 57.

(Witness excused.)

[fol. 126] H. J. GREEN, produced, sworn and examined at the time above mentioned, testified as follows:

Examination by Mr. Kates:

Q. You are the same Mr. Green who testified yesterday as to the records of the American National Bank?

A. Day before yesterday.

Q. You have brought with you Mr. Green the ledger account of the American National Bank of Agnes C. Leftwich?

A. Yes, sir.

Q. During the years 1918 and 1919?

A. From June 24, 1918, to November 5, 1919. Then there is another account under the name of Agnes O. Leftwich which I am quite sure is the same account as Anges C. This account was opened up in October, I am not sure what year, and was closed November 22nd, evidently 1919.

Q. Mr. Green is that a continuation of the Agnes C. Leftwich account or an entirely new account?

A. It was a new account. It appears to be opened up I would say through error for the reason Mrs. Leftwich's signature card shows that her "C" looks very much like an "O," and I assume it was an error in opening up the account and the deposits as shown to Agnes O. Leftwich evidently should have been shown to Agnes C. Leftwich.

Q. Those sheets you have are from the original ledger of the American National Bank?

A. Yes, sir.

Mr. Kates: If the court please I will ask permission to introduce those in evidence, I believe there are eleven sheets, and ask the stenographer to mark them as Trustee's Exhibit, and ask the stenographer to make copies of them with the privilege of returning the originals to the American National Bank.

Mr. Martin: Objected to on the ground it is incompetent and irrelevant.

The Referee: Objection overruled. It will be admitted and marked.

Mr. Martin: This objection is made on the appearance I made at the commencement of the hearing.

(Witness excused.)

J. P. Byrd, Jr., produced, sworn and examined as a witness at the time and place above mentioned, testified as follows:

Examination by Mr. Kates:

Q. State your name to the court.

A. J. P. Byrd, Jr.

[fol. 127] Q. What position do you hold?

A. Vice President First National Bank here.

Q. First National Bank of Tulsa?

A. Yes, sir.

Q. The First National Bank has been combined with the Union National?

A. Yes, sir.

Q. And the records of the Union National Bank are now in the custody of the First National Bank as its successor?

A. Yes, sir.

Q. You are vice president and you have custody of the books and accounts with the other officers I presume?

A. Well I don't know that they are absolutely in my custody; I have access to them.

Q. You have brought with you a ledger of the Union National Bank?

A. One of them.

Q. That ledger shows the account of Agnes C. Leftwich?

A. Yes, it shows Agnes C. in some places and Agnes O. in some.
Q. But it was run as the same account?
A. Same account.
Q. Mr. Byrd on the ledger you have produced you can identify the pages upon which the account of Agnes C. or Agnes O. Leftwich, being the same account?
A. Yes.
Q. Will you do that?
A. Yes, sir, this is it.
Q. Now, have you marked the pages in that book containing the accounts of Agnes C. Leftwich so that they can be identified in order?
A. Yes, they were not in order when they were bound and I have numbered them so I can follow them down consecutively.
Q. How have you numbered those, with numeral numbers?
A. Yes.
Q. 1, 2, 3, etc.?
A. Yes, I had to number six of them as 1-A, 2-A, etc., I thought the account opened in October when it opened in March.
Q. March of what year?
A. 1917.
Q. Then that account——
A. No, it opened October 1, 1917, and I thought it opened here.
Q. How have you marked the page, page 1?
A. Yes.
Q. When was that account closed?
A. Closed October, 1920.
Q. Now those sheets are all headed Agnes C. or Agnes O. Leftwich to identify the account?
A. Yes, sir.
Q. And those sheets contain the account of Agnes C. Leftwich in that bank?
A. Yes, sir.
Q. How many sheets?
[fol. 128] A. There are thirty pages, that would be fifteen sheets, and three that would be eighteen sheets.

Mr. Kates: Now if the court pleases we ask leave to introduce these eighteen sheets and have the stenographer identify them as Trustee's exhibits, and ask leave for the stenographer to make a transcript of these sheets introduced in evidence and with the privilege of returning the book to the First National Bank of Tulsa.
Mr. Martin: The admission of that evidence is objected to by Mrs. Gessel on the ground that they are incompetent and irrelevant.
Mr. Kates: We expect to connect it up if the court pleases.
The Referee: Objection overruled.
Mr. Martin: Exception.

Q. Does that book show the account of Anna B. Gessel?
A. No, sir.
Q. Anna B. Chamberlin?
A. Not in that book, in another.

Q. There was no account of A. C. Leftwich, agent or trustee?
A. Couldn't find any except this one account.
Q. Will you get the book containing the Anna B. Chamberlin account with the Union National?
A. All right.
Q. You have identified those pages so they can be marked?
A. Yes, sir.
Q. How have you marked them?
A. Same as the other 1, 2, 3, 4, 5, 6, 7 and 8.
Q. Those contain the heading Anna B. Chamberlin?
A. Yes, sir.
Q. How many sheets are there?
A. Four sheets.
Q. Eight pages, that is the sheets are written on both sides?
A. Yes, sir.
Q. What year does that account begin?
A. 1918.
Q. And what date?
A. February 23rd.
Q. And when does it close?
A. Well it was transferred to the First National. It was inactive July 1, 1919, to the consol*di*ation.
Q. What was the balance at the date of consolidation?
A. According to this $264.30.
Q. What is the date of that consolidation?
A. January 1, 1921.

Mr. Kates: Now if the court pleases we would like to introduce in evidence these eight sheets and ask the stenographer to number them Trustee's Exhibit #43 and to make a transcript of them and to return the book to the First National Bank.
[fol. 129] Mr. Martin: Mrs. Gessel objects to the admission in evidence of these documents upon the ground that they are irrelevant and incompetent.
The Referee: Objection overruled.

Q. Do you find an account in those books of B. M. Gessel?
A. I didn't look for it; it is not in these.

Mr. Kates: That is all at this time.
Mr. Martin: That is all.

(Witness excused.)

Anna B. Chamberlin, recalled for further examination, testified as follows:

Examination by Mr. Mitchell:

Q. Your name was formerly O'Day.
A. Yes, sir.
Q. You were married to Mr. O'Day?

A. Yes, sir.
Q. Is Mr. O'Day dead?
A. No, sir.
Q. You were divorced from Mr. O'Day?
A. Yes, sir.
Q. How many children did you have by Mr. O'Day?
A. One child.

Mr. Martin: This investigation has nothing to do with the case and I object to it as irrelevant and incompetent and improper examination.

Mr. Mitchell: If the court please we will connect it up every bit of it.

Mr. Martin: Well now that can be said, but so far these gentlemen have not made any connections they have promised to.

Mr. Mitchell: This investigation will go on for some considerable time; we can connect it up.

The Referee: Overruled.

Mr. Martin: I can't see how it is possible any connection can be made of Mrs. Chamberlin's former marriage to Mr. O'Day. That has nothing to do with this case and couldn't have. There is nothing here upon which the imagination could construct such a theory and I submit your honor it is——

Mr. Mitchell: The objection has been overruled I believe.

Q. You have two sons by Mr. O'Day?
A. No, sir.
Q. One son by Mr. O'Day?
A. Yes, sir.
Q. What is his name?
A. A. F.
Q. Where is A. F. O'Day?
[fol. 130] A. He is living in Canada.
Q. What point?
A. Walloch, Ontario.
Q. He formerly was employed by the Western Rope and Manufacturing Company?
A. Yes, sir.
Q. How long was he in the employ of that company?
A. Well I can't say exactly; for a year or more.
Q. For a year or more you would say?
A. Yes, sir.
Q. Was your other son ever employed by the Western Rope & Manufacturing Company?
A. Yes, for a short time out here at the plant just watching the plant.
Q. How long did he work for the company?
A. Month or so.
Q. Have you any other children besides Mrs. Gessel and these sons?
A. No, sir.

Q. Mrs. Gessel was also a daughter by a former marriage?
A. Yes, sir.
Q. You have testified Mrs. Chamberlin that you had a bank account with the Producers, with the Union National Bank and with the American National Bank. Did you have any other bank account in Tulsa at any time?
A. I think some years ago I had one at the Colonial Trust.
Q. You had an account with the Colonial Trust?
A. I think so.
Q. Can you fix the time?
A. Somewhere in 1911.
Q. Now did you ever have any other bank account in Tulsa?
A. Not that I can remember, no, sir.
Q. Was there a bank at Broken Arrow?
A. Yes, sir.
Q. Did you have an account there?
A. Not very much; I might have a small account there.
Q. You don't remember?
A. I might some time or other.
Q. Which bank at Broken Arrow?
A. There are two banks, we did business with the Arkansas Valley and First National.
Q. You did business with both of them?
A. Yes, in a business way.
Q. Well you did business with both of those banks?
A. Yes.
Q. What period did you have business transactions with those two banks?
A. Well during the time we were in business down there.
Q. Was there an account carried in your name in either or both of those banks?
A. No, sir.
Q. What name was it carried?
A. C. O. D. Grocery.
Q. And never was any personal account carried by you?
[fol. 131] A. Not in my name.
Q. These three bank accounts we have mentioned which you had were in Tulsa, the Central National, the Union National——
A. I had no account in the Central National.
Q. The Union National, American National and Producers. Mrs. Leftwich-Gessel had authority to draw money out of all three of those accounts did she not?
A. No, sir.
Q. Which ones?
A. Union and American.
Q. She didn't have any authority to draw on the Producers?
A. No, sir, I don't think so.
Q. Well are you sure of that?
A. I am quite sure.

Q. You have attempted within the last month or six weeks to sell the house out on the Jenks Road?

A. The property has been for sale since it was built.

Q. And you have entered into some arrangement for the sale of that property have you not?

A. Yes, sir.

Q. With whom is that arrangement?

A. With a real estate man.

Q. What is his name?

A. Terwilleger.

Q. Is he the purchaser?

A. He represents the purchasers.

Q. What is the purchaser's name?

A. Creekmore.

Q. What are Mr. Creekmore's initials?

A. I don't know.

Q. Does he live here in Tulsa?

A. Yes, sir.

Mr. Kates: C. R. Creekmore.

Q. At what price were you making the sale to Mr. Creekmore?

A. About $42,000.

Q. At $42,000.00, don't you know the exact amount?

A. We were selling a whole lot of stuff.

Q. What was the total?

A. $50.000.00.

Q. What did that sale include?

A. All my furniture.

Q. And the house?

A. Yes, sir.

Q. And all of the furniture and fixtures in the house?

A. Yes, sir.

Q. You were to get $50,000. Was any money paid on that sale to you?

A. No, sir.

Q. Or to anybody else?

A. Well Mr. Terwilleger handled that.

Q. Did any money come into your hands in connection with that?

A. No, sir.

Q. A contract was signed was it not for the sale of the property?

A. Yes, sir.

Q. And the abstract posted down and all arrangements made to convey the property?

A. I don't know anything about the abstract; Mr. Terwilleger was looking after that.

[fol. 132] Q. And the institution of this suit involving this property is what stopped that transaction?

A. Yes, sir, I suppose so.

Q. There is some furniture, a considerable amount of furniture in that house, whose furniture is that?

A. That is mine.

Q. Will you tell us just where you got that furniture?

A. Well we brought our furniture from Broken Arrow and after Mrs. Leftwich got her furniture she sold mine and replaced mine with hers.

Q. So the furniture now in the house was Mrs. Leftwich's furniture?

A. Yes, sir, part of it; not anything like all of it.

Q. How much of it would you say was Mrs. Leftwich's?

A. Dining room suit and living room suit, just two pieces and a bed room suit.

Q. What about the piano?

A. The piano doesn't belong to me.

Q. Who does it belong to?

A. Belongs to her.

Q. It is Mrs. Leftwich's piano?

A. Yes, sir.

Q. Was that included in this sale?

A. No, sir.

Q. What else is in the house out there now that was excluded from this sale?

A. Nothing but my one bed room suit and some rugs that I retained.

Q. And that all belongs to you?

A. Yes, sir.

Q. Are there some oriental rugs there?

A. No, sir.

Q. What kind of a piano is this?

A. It is a Steinway.

Q. Player piano?

A. Yes, sir.

Q. And that is still the property I believe you say of Mrs. Gessel?

A. Yes, sir.

Q. Has she any other property there?

A. She has her personal effects.

Q. Any of this furniture she owns?

A. Not anything much in the house no, sir.

Q. Well would you say there is anything?

A. Well she has a couple of tables that we are not using.

Q. Are they in the house?

A. They are there.

Q. Were they included in this sale?

—. No, sir.

Q. Now, the furniture which is now in use throughout the house and which was included in this sale will you state just how you acquired that furniture?

A. Why we have had it for years some of it.

Q. The portion that you included as a part of this sale how much have you had for years and how much did you get from Mrs. Gessel? [fol. 133] A. Dining room suit I told you and living room suit two pieces and a bed room suit, twin beds.

Q. That is all you got from her?

A. That is all.
Q. You sold your old furniture?
A. No, she sold it.
Q. How much did she get for that?
A. I don't know.
Q. That sale was made by Mrs. Gessel?
A. Yes, sir.
Q. She retained the proceeds of the sale?
A. Yes, sir.
Q. You know nothing about that. There is a Haines automobile out there at the house?
A. That doesn't belong to us.
Q. Who does it belong to?
A. My oldest son.
Q. He is the one in Canada?
A. He left it here for sale.
Q. And an electric automobile?
A. No, sir.
Q. What became of the electric automobile?
A. Sold.
Q. Who owned that?
A. I did.
Q. Did you get the proceeds of that?
A. I did.
Q. Did you make the sale?
A. I did.
Q. To whom did you sell it?
A. The salesman sold it, I don't know the man's name.
Q. What was the salesman's name?
A. Reeves I think.
Q. What did you get?
A. $2,000.00.
Q. He lives here in Tulsa?
A. Yes, sir.
Q. Do you know what company he is connected with?
A. He wasn't connected with any company.
Q. Do you know whether he is now or not?
A. No I don't
Q. When was that sale made?
A. Some time during August, around the first of August.
Q. That $2,000 was deposited in your bank account?
A. Yes, sir, it is mostly spent now.
Q. Spent that for living expenses?
A. Yes, sir.
Q. What about the Packard automobile?
A. Which one?
Q. Are there two?
A. Mr. Chamberlin has a Packard.
Q. And who owns the other Packard that is out there?
A. Mrs. Leftwich, Mrs. Gessel.
Q. Mrs. Gessel owns the Packard runabout?

A. Yes, sir.
Q. And the other Packard is a touring car?
[fol. 134] A. Yes, sir.
Q. Did your husband get that from Mrs. Gessel?
A. He bought it from her.
Q. Do you know when that purchase was made?
A. Well when he sold a Cadillac car; he has had it some time, 1918 or 1919.
Q. You don't remember when it was?
A. No, sir, not exactly.
Q. Do you know the price Mr. Chamberlin paid for that car?
A. $3,000.00.
Q. He paid Mrs. Gessel $2,000 for that car?
A. $3,000.00.
Q. You can't fix the time of that transaction?
A. Some time in 1919.
Q. Do you know when Mrs. Gessel acquired the present Packard which she has?
A. She received that from Mr. Gessel in the settlement.
Q. Did you succeed in finding the checks against your account?
A. I found the Eysenbaugh checks.
Q. What other checks did you find?
A. I didn't find any; you told me to get the statements.
Q. And only the Eysenbaugh checks?
A. Yes, sir, I believe that is all.
Q. None of the Blair checks?
A. No, I didn't get those. I was ill.
Q. Will you produce the Eysenbaugh checks?

Mr. Martin: If these gentlemen wish to introduce these checks I would like to have an order that the originals be returned to Mrs. Chamberlin and the reporter make copies.

Q. These are the only checks you could find Mrs. Chamberlin?
A. Yes, sir.
Q. Payable to the order of O. K. Eysenbaugh?
A. Yes, sir.
Q. And you haven't been able to find any of the Blair checks?
A. No, I haven't found them yet.
Q. Do you think you will be able to find those by the next hearing of this matter, four or five days?
A. I will look for them.
Q. Have you been able to locate a copy of the contract for the purchase?
A. I think I have it here. Mr. Blair must have a copy; he made the contract.
Q. I don't know as to that.
A. I may have it.
Q. I hand you Mrs. Chamberlin a check drawn on the American National Bank of Tulsa, Oklahoma, payable to the order of O. K. Eysenbaugh for $13.33.

[fol. 135] Mr. Martin: You may dispense with any preliminaries if you want to introduce them.

Mr. Mitchell: I want to have her explain them.

Q. Mrs. Chamberlin will you explain what the amount of that check represents?

A. I went to Mr. Eysenbaugh personally and gave him this check for five or six days rent until the garage was completed; that was on #622 East Twentieth street.

Q. You rented a place four or five days?

A. Oh no, three months and a few days.

Q. And this was rent for part of the time?

A. Yes, sir.

Q. Are the checks for other rent here?

A. Yes, sir.

Q. Check No. 17, dated May 5, 1915, for $100.00, that was also rent for the same property?

A. 1919.

Q. And a further check dated May 1, 1919, for $100.00 was that also a rent check?

A. Yes, sir.

Q. Does that cover all the rent you paid?

A. Yes, sir.

Q. So you paid him $213.33 rent?

A. I think that is right.

Mr. Mitchell: I desire to have these three checks which have been identified by Mrs. Chamberlin introduced in evidence and marked as Trustee's Exhibits.

The Referee: They will be admitted and marked Trustee's Exhibits.

Q. I hand you this check Mrs. Chamberlin for $375.00, will you tell us what that is in the first place and what it was used for?

A. That was made out by Mr. Joe Blair for the initial payment on the property.

Q. That was the first payment on the Jenks Road property and that is your signature?

A. Yes, sir.

Mr. Mitchell: I would like to have this marked Trustee's Exhibit #37 and introduce it in evidence.

Q. Here is a check for $3,000.00; I would like for you to tell the court what that is for?

A. That was a payment on the place.

Q. Give the date of that.

A. I can't see it.

Q. It is drawn on the American National Bank on the 7th day of March, 1919, $3,000.00. And I hand you a check for $1,006.66; I will ask you to tell what that payment covers?

A. It explains on there what it is for.

Q. That was in payment of two notes on the Jenks Road property?
A. Yes, sir.
Q. That was the first two notes?
A. Yes, sir.
[fol. 136] Q. And the balance of the notes were anticipated were they not?
A. Yes, sir.
Q. The check for $5,000.00 covers that, the check that was shown you yesterday?
A. I don't know, I suppose so.

Mr. Mitchell: I would like to have both of these checks marked as Trustee's Exhibits #38 and #39.

Q. What business Mrs. Chamberlin did you ever have with the Title Guaranty Trust Company here?
A. I applied for a policy.
Q. What kind?
A. A guaranty title policy.
Q. On your residence out on the Jenks Road?
A. Yes, sir.
Q. Did you ever have any other business with them?
A. Paid for some abstracts there, paid for some insurance there.
Q. Did you ever buy any investments there?
A. No, sir.
Q. Have you ever made any substantial payments to them?
A. Only for insurance.
Q. If very substantial payments have been made to them out of your account it wasn't made by you?
A. No, sir.
Q. You brought statements that were rendered to you from time to time by your bank of your bank account did you not?
A. Yes, sir.

And thereupon an adjournment was taken for the noon hour and the hearing having been resumed at one-thirty P. M. the following proceedings were had:

Conn Linn produced, sworn and examined as a witness at the time and place above mentioned testified as follows:

Examination by Mr. Kates:

Q. State your name.
A. Conn Linn.
Q. In the spring of 1921, that is March or April this year, you were an officer of the Western Rope & Manufacturing Company?
A. What month?
Q. April, 1921?
A. I believe I was.

Q. At that time the Western Rope & Manufacturing Company was indebted to the Andrews Steel Company of Newport, Kentucky, the indebtedness being represented by two notes of $5,000.00 each and one note for $4,000?

A. They were indebted about $14,000.00; I don't remember the notes, one or two or three; I think there was two notes.

[fol. 137] Q. Now at that time, at the time of the indebtedness and in March or April, 1921, did you have a conversation with any representatives of the Andrews Steel Company about that indebtedness?

A. Yes, sir.

Q. Did you have any conversation with them about the return of property to the Andrews Steel Company in payment of this indebtedness?

A. Yes, sir.

Q. Can you state what that conversation was with reference to the solvency or insolvency of the company or its ability to pay these notes?

A. Some gentleman, I don't recall his name, a representative of the Andrews Steel Company, called at the office of the Western Rope & Manufacturing Company and called on Miss Howard, who was there in charge, and she brought him into my office, or invited me into their office I don't remember which, and we talked it over; and Mr. Gessel himself and I think Mrs. Gessel had had the matter up with them, and made an offer to return some material, or part of the material in satisfaction of this debt. And I think on one occasion when I met Mr. Gessel in Kansas City we discussed the condition of the business. He told me if we could induce the Andrews Steel Company to take back some of this material in satisfaction of this debt to be sure and do it. And some time after that this representative called and we talked it over and I told him what my directions were and the property was at the plant out here and we would be glad to turn it back to them in settlement of the debt; that they were having trouble in collecting enough to pay these debts and unless he took that property back in all probability it would be a good while before they were able to take up the debts.

Q. That is if they didn't take the property back the company wouldn't be able to pay the notes?

A. I told him we were having trouble in collecting and were doing the best we could, but I didn't believe we were going to be able to pay it for a good while if they didn't take this material back.

Q. You don't know the man's name?

A. No, I don't recall his name. I really think there were two there at different times.

Q. It wasn't Mr. Applegate?

A. I don't think that is the name.

(Witness excused.)

Mr. Mitchell: I am through with Mrs. Chamberlin for this hearing. I want to inquire of Mrs. Gessel as to one matter and after that I want to ask to have this hearing adjourned to a fixed date and I suggest the 28th.

[fol. 138] Mrs. AGNES C. GESSEL, recalled for further examination, testified as follows:

Examination by Mr. Mitchell.

Q. Mrs. Gessel, do you recall the purchase of the property in Terrace Drive Addition, Block 1, Terrace Drive Addition?
A. Yes, sir.
Q. Do you remember what was paid for that property?
A. I believe it was about $3,500.00.
Q. And the deed to that property was taken in your name?
A. Yes, sir.
Q. Who paid for that property?
A. The Western Rope & Mfg. Co.
Q. And it was their property?
A. Yes, sir.
Q. What disposition was afterwards made of that property?
A. It was sold to a party named Mitchell I believe.
Q. S. W. Mitchell, do you remember the date?
A. No, I don't.
Q. Was it about the 9th of February, 1920?
A. May have been about that date.
Q. What was the consideration for that?
A. $5,000.00.
Q. And Mr. Mitchell paid $5,000.00 for that property.
A. Yes, sir.
Q. Do you remember whether any commissions were paid or deductions from that $5,000 were made?
A. I believe there was; I think a man named Quinn who was at that time in the Assessor's office got some commission I don't know whether he got it from us.
Q. You don't remeber the net amount that was received from that property?
A. No, sir.
Q. In the neighborhood of $4,500.00?
A. Well it was more than that.
Q. Were there any taxes due on that property at that time?
A. Of that I couldn't say; if there was we took care of it in the general run.
Q. Do you remember how that $5,000 was paid.
A. With a check.
Q. To whom was that check made payable?
A. I believe to me.
Q. Can you tell what disposition you made of that $5,000?
A. Yes, sir.

Q. Will you explain?

A. I deposited it to the credit of B. M. Gessel as I was instructed.

Q. What charges were made on the books?

[fol. 139] A. Well the bookkeeper was instructed to credit real estate and charge Mr. Gessel's account with it.

Q. Do you remember what bank that deposit was made in?

A. No, I couldn't say positively; that party's check ought to show.

Q. Where did Mr. Gessel have deposits at that time?

A. What year was that?

Q. 1920, last year.

A. Well he had a checking account in the American National Bank and he had one in the Exchange. I am not sure but what he had one in the Central.

Q. The purchase price of this property was deposited to his account in one of these banks?

A. Yes, sir.

Q. His personal account?

A. Yes, sir.

Q. And his account on the books of the company was charged with that amount?

A. Yes, sir.

Q. Do you know whether Mr. Mitchell gave his own check for that or whether it was a cashier's check?

A. If I remember correctly it was his own check.

Q. Is Mr. Mitchell in town now?

A. I don't know, I haven't seen him since then. He and Mr. Quinn came to the office and consummated the deal.

Q. Did you receive a check for a similar amount from Mr. Gessel about that time?

A. I don't recall.

Q. Your account Mrs. Gessel shows, your account with the Union National Bank shows that on February 10, 1920, the sum of $4,400.00 was credited to you on the books of that bank. Was that sum any part of this $5,000.00 received from Terrace Drive?

A. No, sir.

Q. Did you receive any part of the proceeds of this Terrace Drive Addition property?

A. No, sir.

Q. Then that $4,400.00 that was deposited by you in the Union National Bank in your account on February 10th was not any part of the proceeds of the Terrace Drive?

A. No, sir.

Q. Had no connection whatever with the sale of the Terrace Drive Property, is that right?

A. No. What is the date of the sale of that property?

Q. February 9th.

A. And when was the deposit made?

Q. February 10th?

A. No, it had no connection.

Q. You remember the deposit made on that date?
A. No, but I may be able to look it up in my records.
Q. Will you do that?
A. I will try to find it.
Q. Did you keep any books of your private affairs?
A. No, sir, just my check book.
[fol. 140] And your checks as they were returned?
A. Yes, sir.
Q. You have testified that you had a personal bank account in the Union National Bank and at the Central National Bank during the years 1918, 1919 and 1920. Did you have any other bank accounts during those three years?
A. The American National Bank I believe I said instead of the Central.
Q. And Union National?
A. Yes, sir, I had an account—what year did you say, 1918?
Q. 1918, 1919, 1920.
A. I think those were the only banks at that time.
Q. The only banks in which you carried personal accounts?
A. I think that is true.

Mr. Mitchell: You may inquire.

Examination by Mr. Martin.

Q. At the time of your severing your connection with the Western Rope was there any agreement made between you and Mr. Gessel the president of the company as to what disposition would be made of the balance standing upon your account?
A. Yes, sir.
Q. What was that agreement?
A. He instructed Miss Howard to charge it to his personal account.
Q. Do you know whether that was done or not, actually done on the books?
A. It appears to me it hasn't been, because I note from the audit that they have me charged with several items.
Q. Was that instruction given by Mr. Gessel to Miss Howard?
A. In my presence.
Q. And was that pursuant to an agreement?
A. Yes, sir.

Examination by Mr. Mitchell.

Q. Did that include the Turman Oil Company item?
A. Yes, sir.
Q. You knew about that at the time did you?
A. Yes, sir.
Q. Did Mr. Gessel know about it?
A. He was familiar with it yes, sir.
Q. He knew about the Turman matter?
A. Yes, sir.

The Referee: Was this agreement in writing Mrs. Gessel?
A. No, sir.

(Witness excused.)

The Referee: The meeting will be adjourned until September 28, 1921.

[fol. 141] TRUSTEE'S EXHIBIT 34

Tulsa, Okla., 4-1, 1919. No. 274. The Union National Bank 86-12 10. Pay to the order of O. K. Eysenbach $100.00, One hundred dollars. Anna B. Chamberlin.

Stamped: Union National Bank, Tulsa, Okla., Apr. 9, 1919, Paying and Receiving L to Z, No. 3.

Endorsed on back: O. K. Eysenbach. Perforations cannot be read.

TRUSTEE'S EXHIBIT 35

The American National Bank 86-10, No. 25.

Tulsa, Okal., 6-6, 1919. Pay to the order of O. K. Eysenbach $13.33 100, Thirteen and 33/100 dollars.

This check is in full settlement of account as shown hereon. Acceptance by endorsement constitutes receipt in full. Anna B. Chamberlin.

1919, June 6, payment in full on rent 622 E. 20th St. 13.32.

Stamped: Union National Bank, Tulsa, Okla. Jun. 10, 1919. Collections and Exchange No. 4.

Anna B. Chamberlin, Tulsa, Oklahoma.

Endorsed on back: O. K. Eysenbach.

For deposit to exchange only Crown Petroleum Division of Oklahoma Pro. and Ref. Corporation of America, by J. R. Wilkins.

Paid through Clearing House Jun. 11, 1919. All prior endorsements guaranteed. The Union National Bank, Tulsa, Oklahoma. Perforated: Paid 6 11 19.

TRUSTEE'S EXHIBIT 36

The American National Bank 86-10, No. 17.

Tulsa Okla., May 1-5 1919. Pay to the order of O. K. Eysenbach $100.00, One Hundred and No/100 Dollars.

This check is in full settlement of account as shown hereon. Acceptance by endorsement constitutes receipt in full. Anna B. Chamberlin.

191—Rent on 622 S 20th St. for month ending 5-31-19.

Stamped: Union Nationl Bank, Tulsa, Okla., May 5, 1919. Paying and Receiving L to Z No. 3.

Endorsed on back: O. K. Eysenbach.
Stamped on back: Paid through Clearing House May 6, 1919. All prior endorsements guaranteed. The Union National Bank, Tulsa, Oklahoma. Perforated: Paid 5 6 19.
Anna B. Chamberlin, Tusla, Oklahoma.

[fol. 142] TRUSTEE'S EXHIBIT No. 37

Tulsa, Okla., 2/24, 1919. No.—. The Union National Bank 86-12. Pay to the order of O. K. Eysenbach $375.00 Three Hundred Seventy Five no/100 dollars. To apply on contract for 5 acres land sec 18-18-13. Subject to approval of title. Anna B. Chamberlin.
Stamped: Union National Bank, Tulsa, Okla, Feb. 25, 1919. Paying and Receiving A to K No. 2.
Endorsed on back: O. K. Eysenbach. Perforations not legible.

TRUSTEE'S EXHIBIT No. 38

Tulsa, Okla., 4-7-1919, No. 279. The Union National Bank 86-10. Pay to the order of O. K. Eysenbach $1006.67/100, One thousand six and 67/100 dollars. For note due April 6th. Anna B. Chamberlin.
Stamped: Union National Bank, Tusla, Okla., Apr. 9, 1919. Paying and Receiving L to Z No. 3.
Endorsed on back: O. K. Eysenbach. Perforations not legible.

TRUSTEE'S EXHIBIT No. 39

Tulsa, Okla., 3-7, 1919. 10 No.—Pay to the order of O. K. Eysenbach $3000.00. Three thousand dollars. To The American National Bank. Tulsa Okla. Anna B. Chamberlin.
Stamped: Exchange National Bank, Mar. 10 1919. Tell 1-A. Tusla, Okla.
Exchange National Bank, Mar. 11, 1919, Tulsa, Okla.
Exchange Nat. Bank, Mar. 13, 1919, Teller No. 2, Tulsa, Oklahoma.
Endorsed on back: O. K. Eysenbach.
Stamped on back: Tulsa Clearing House Association Exchange National Bank. Prior endorsements guaranteed. Paid Mar. 14, 1919. Perforated Paid 3-14-19. 5,000.00.

At Tulsa, in said District, on This the 26th day of October 1921, Before Honorable A. F. McGarr, Referee in Bankruptcy

[Title omitted]

[fol. 143] APPEARANCES OF COUNSEL

Phillip Kates, for Trustee.
H. B. Martin, Esq., specially for Mrs. Anna B. Chamberlin and Mrs. Agnes C. Giessel to object to the jurisdiction of the court.

Mr. Kates: We offer in evidence the accounts of A. C. Leftwich and Anna B. Chamberlin in the First National Bank of Broken Arrow.
Mr. Martin: Objected to as incompetent, irrelevant and immaterial.

C. E. FOSTER, produced, sworn and examined at the time and place above mentioned, testified as follows:

Examination by Mr. Kates:

Q. State your name.
A. C. E. Foster.
Q. Where do you live?
A. Broken Arrow, Oklahoma.
Q. What business are you in in Broken Arrow?
A. Cashier of the First National Bank.
Q. You have brought with you certain three ledger sheets showing the account of A. C. Leftwich and Anna B. Chamberlin beginning with October 8, 1917 are those sheets accurate copies of the ledger sheets of your bank?
A. They are.
Q. Do they comprise the entire account in your bank of A. C. Leftwich and Anna B. Chamberlin?
A. Well that is all the checking account; you understand one is the personal account of Anna B. Chamberlin; there is a joint account and a personal account.
Q. Two sheets are the joint account of Anna B. Chamberlin and Agnes C. Leftwich.

Mr Kates: I will offer in evidence and ask the stenographer to mark it Trustee's exhibit #40.
Mr. Martin: Objected to as incompetent, irrelevant and immaterial and object to the jurisdiction of the court.
The Referee: Overruled.

Mr. Kates: Now I will hand you the ledger account of Anna B. Chamberlin and ask you if this the copy of the account showing the checking account of Anna B. Chamberlin in your bank?
A. It is.

Mr. Kates: I will hand this to the stenographer and ask him to mark it Trustee's Exhibit #41.
Mr Martin: Same objection.
The Referee: Overruled.

[fol. 144] Q. You had no account of C. O. D. Grocery?
A. No.

Mr. Kates: That is all.

(Witness excused.)

At Tulsa, in said District, on This the 28th day of October, 1921
Before Honorable A. F. McGarr, Referee in Bankruptcy.

[Title omitted]

Adjourned hearing for examination of bankrupt.

APPEARANCES OF COUNSEL

Phillip Kates, Esq., for trustee;
P. C. West, Esq., for petitioning creditors;
H. B. Martin, Esq., specially for Mrs. Anna B. Chamberlin and Mrs. Agnes C. Gessel.

ANNA B. CHAMBERLIN, produced, sworn and examined at the time and place above mentioned testified as follows:

Direct examination by Mr. Kates:

Q. You are the Anna B. Chamberlin that has heretofore testified in this case?
A. Yes, sir.
Q. Mrs. Chamberlin you testified at a former hearing that in the spring of 1920 you purchased about $10,000.00 worth of mortgages from the Exchange Trust Company?
A. Yes, sir.
Q. Do you still have those mortgages?
A. No, sir.
Q. What did you do with them?
A. I sold them.
Q. To whom?
A. Liberty National Bank.
Q. When did you sell them?
A. Some time last month.
Q. Last month?
A. Yes, sir.
Q. Now what did they pay you for them?
A. They paid me ten thousand dollars.
Q. What did you do with the money?

A. I have got it.
Q. Where is it?
A. I have got it.
Q. Where is it?
A. In my possession.
Q. In currency?
A. Yes, sir.
Q. Do you keep it in a safety deposit box?
A. I don't propose to tell you where I keep it.

Mr. Kates: I ask that the witness answer the question.
[fol. 145] A. I told you it was in my possession.

Mr. Kates: I have asked whether she keeps it in a safety deposit box in a bank.
A. No, I do not.
Q. Where is it?
A. I have got it in my possession.

Mr. Martin: Your honor I object to that question representing the witness. The publicity as to where people keep valuable property is in these times when Mr. Kates is abroad, and hy-jackers, is not desirable. She has a right that is free from any molestation until judgment is rendered against her to any property that is in her personal possession and it is not necessary for her to tell Mr. Kates what pocket it is in. She says that she has the proceeds of these mortgages in her possession and that is as much information as Mr. Kates is entitled to have.
The Referee: I think probably that is sufficient.

Q. Those mortgages, Mrs. Chamberlin, you testified at a former hearing were purchased with the proceeds of this farm at Broken Arrow?
A. Yes, sir.
Q. Where did you get the money to buy that farm?
A. Why my daughter gave it to me, she owed me some money.
Q. How much?
A. Well I just don't know exactly how much. I wanted to buy the farm.
Q. What did you pay for that farm?
A. $9500.00
Q. How did she give you that money?
A. Most of it was my money; I believe she sent it to the bank at Broken Arrow.
Q. Didn't she give you a cashier's check?
A. I don't know.
Q. And didn't you endorse that?
A. I don't know; I know it was put in the Broken Arrow bank.
Q. When you bought these mortgages from the Exchange Trust Company you didn't put any assignment on record to yourself?
A. I don't know; they handled the proposition for me.
Q. How did you do when you sold them?

A. I gave an assignment.
Q. Did they have the abstracts examined?
A. I don't remember that.
Q. And they paid you $10,000.00 in currency?
A. They did.
Q. For those mortgages?
A. Yes, sir

[fol. 146] Q. They didn't give you any checks or anything?
A. No, sir.
Q. They just gave you $10,000.00 in currency?
A. Yes, sir.
Q. Who gave you that money?
A. The bank.
Q. Who in the bank?
A. One of the tellers.
Q. Did you make the assignment to the Liberty National?
A. I don't know. I signed my name I think to the paper.
Q. They didn't think it was anything extraordinary to take $10,000.00 in currency?

Mr. Martin: I object to that.
The Referee: Sustained.

Q. Mrs. Chamberlin you testified at a former hearing that when you began this house on the Jenks Road you had about $32,000.00 available to build that house?
A. Yes, sir, thirty-four I think.
Q. Did you have that in cash?
A. No, sir, not at the time. I had property that I owned.
Q. What property did you have?
A. I told you all about it; I haven't any notes here.
Q. Mrs. Chamberlin at one time you purchased from Agnes Leftwich Lot 2, Block 55, Broken Arrow?
A. Yes.
Q. Do you remember what you paid her for that?
A. She turned that over to me.
Q. You didn't pay her anything?
A. No, sir.
Q. Do you know what that cost originally?
A. No, I don't remember.
Q. Do you remember what you sold it for?
A. Yes.
Q. How much?
A. $2,000.00
Q. You sold that in 1914?
A. Yes, sir.
Q. You sold that to W. T. Dalton?
A. Yes.
Q. Did Mr. Dalton pay you that money in cash?
A. Mr. Dalton didn't pay me, it was sold through a real estate firm. I didn't handle the deal.

Q. Who paid you the money?
A. Mr. Williams I think.
Q. What Williams?
A. Real estate firm in Broken Arrow.
Q. Did he pay you $2,000.00 in cash?
A. I don't remember.
Q. Did he pay you all the money at that time?
A. I don't think there was any mortgage. He took his commission out of it I believe.
Q. Now that lot was originally owned by your husband?
A. Yes.
Q. And then he deeded it to you?
A. No.
[fol. 147] Q. Didn't he deed that to you in 1911?
A. No, my daughter bought it.
Q. There is a deed of record in 1911.
A. I think you are mistaken.
Q. You quit-claimed to your husband?
A. I might have done that.
Q. And it was sold to your daughter?
A. Later on it was.
Q. Now at one time you owned Lots 19 to 24, Block 13, Broken Arrow?
A. Yes, sir.
Q. You purchased those from your daughter.
A. My daughter gave me those.
Q. Did you pay her any money?
A. I might have given her something.
Q. You didn't pay her $1,700.00.
A. It didn't cost $1,700.00.
Q. Well if there is a deed showing you paid Agnes Leftwich $1,700.00 that is a mistake?
A. It was sold for that.
Q. If such a recital occurred in a deed to you from your daughter that you paid her $1,700.00 that recital would not be correct?
A. I don't think that that was ever done.
Q. Do you remember whether you ever paid her $1,700.00?
A. It was sold for $1,700.00; it was bought for $900.00; you are mistaken.

The Referee: The question is, if the deed recites that.
A. No, sir, I don't remember that.

Mr. Martin: There is no deed here; there is no evidence; that is entirely too hypothetical.

A. Well I don't remember that at all.
Q. But you sold that land then to C. A. Way in 1918?
A. I did.
Q. And what did you receive for it?
A. $1,700.00.
Q. That included Lots 19 to 24, Block 13, Broken Arrow?

A. I guess so, I don't know the description.
Q. And at one time you owned Lot 12, Block 12, Ludwig Second Addition to Tulsa?
A. Yes, sir.
Q. From whom did you buy that?
A. I don't remember.
Q. From Mr. Holl——?
A. It was bought through real estate men here.
Q. Do you remember what you paid for it?
A. I believe $2,000.00.
Q. And you deeded that to your husband?
[fol. 148] A. He bought it from me later on.
Q. What did he pay you?
A. He paid me for what improvements I put on it; I think something like $2,500.00; I don't remember exactly how much.
Q. He didn't pay you the purchase amount you paid for it?
A. He paid me more.
Q. That was in 1911?
A. Yes.
Q. Now Mrs. Chamberlin you at one time owned the North fifty feet of Lot 3, Block 197, Tulsa?
A. Yes.
Q. To whom did you sell that?
A. I don't remember selling it to anybody.
Q. Did you transfer that to your daughter?
A. Yes.
Q. And your daughter transferred to you a mortgage on that?
A. Yes, sir.
Q. Do you still own that lot?
A. No, sir. I sold it to a lady named Green.
Q. What is her first name?
A. Mrs. Ruth Green.
Q. How long ago?
A. Month or so ago.
Q. About the same time?
A. Either before or after.
Q. It was about the same time you sold the other mortgages to the Liberty National?
A. Yes.
Q. How much did she pay you for that?
A. $3,300.00.
Q. In currency?
A. Yes, sir.
Q. These sales occurred since your last examination in the bankruptcy court did they not?
A. I am not sure about that.
Q. Can't you fix the time definitely?
A. It either was before or just after I was here in court.
Q. What time in September was it you sold these mortgages?
A. Well I am not sure.
Q. Have you any memorandum that would indicate?

A. No I haven't, not with me.
Q. Where does this Mrs. Green live?
A. At present she is living in Louisiana?
Q. Was she here at the time you sold them?
A. No.
Q. Did you sell them by mail?
A. No, she had money to invest and I sold it for $3,300.00 through the bank.
Q. Liberty National?
A. No, sir, the First National of Broken Arrow.
Q. Did you know Mrs. Green before that?
A. Yes, sir.
Q. How long have you known her?
A. Oh I have known her a long time.
Q. Had you had any business dealings with her before that time?
A. No, I don't think so.
[fol. 149] Q. You had never sold her anything?
A. No.
Q. How did you decide to sell it to Mrs. Green?
A. Well she happened to have the money.
Q. Where?
A. In the bank.
Q. In what bank?
A. First National of Broken Arrow.
Q. How did you find that out?
A. Through her father.
Q. Where is her father?
A. He is down there at Broken Arrow.
Q. Is he in the bank?
A. Yes, sir.
Q. Did you go down to the bank to see him?
A. I did, I asked him to buy it and he said his daughter had money to invest and wanted to know what I wanted for it.
Q. Well when you made that sale did you take down your abstracts and have them examined by the bank?
A. No.
Q. Did you just deliver the mortgage and the assignments?
A. I did. I delivered the mortgage and the assignment.
Q. You say this Mr. Green is connected with the bank?
A. No, sir.
Q. What does he do, her father?
A. Mr. Hurd. I believe he is the president of the bank.
Q. Mr. F. S. Hurd?
A. Yes, sir.
Q. You took the matter up with him first?
A. Yes.
Q. And told him you wanted to sell this mortgage and he said Mrs. Green had money there?
A. Yes.
Q. Did you have the mortgage and assignment with you at the time?

A. I did.
Q. And he turned you over $3,300.00 in currency?
A. Yes, sir.
Q. Did you deposit that in your account?
A. No, sir.
Q. You brought it back to Tulsa?
A. Yes, sir.
Q. And where did you put it?
A. I have got it.
Q. Where?

Mr. Martin: That is the same objection your honor.

A. I have it in my possession.
Q. Have you got it in a bank in a safety deposit box?
A. No, sir.
Q. Do you keep it at your house?

Mr. Martin: Now I object to that your honor.

A. I am afraid to tell you, you might hold me up.

Mr. Martin: She has a right to keep it any where she pleases. She is not accountable until some claim is established against her. [fol. 150] The Referee: Objection sustained.

Mr. Kates: Now if the court please I am not at all sure but what under the showing made this morning I wouldn't be justified in asking the Marshal to take Mrs. Chamberlin into custody and to produce that money into court and hold it. Because I propose to show, if the court please, that that money which purchased this farm in Broken Arrow and the mortgages was taken from the Western Rope and Manufacturing Company.

A. You are very much mistaken about that property on Detroit.

Mr. Martin: If the court please if Mr. Kates can go far enough to deprive citizens of their liberty merely to satisfy his curiosity, when he has proven nothing, his power is unlimited.

Q. Mrs. Gessel assigned you a mortgage of $3,000.00 on that Detroit Street property?
A. Yes, sir. I didn't say $3,000.00, I said $3,300.00.
Q. The mortgage was originally $3,500.00?
A. Yes, sir.
Q. Was there a part of that paid off?
A. No, not of the $3,500.00 there wasn't.
Q. But when Mrs. Gessel assigned it to you that was in February, 1921?
A. No, it wasn't I don't think. I think you are mistaken, it was sold before that time.
Q. Well it was sold February 11th?
A. Well she immediately assigned it to me.
Q. She assigned it to you on the 14th?
A. No sir, long time before that.

Q. Now Mrs. Chamberlin you at one time owned Lot 2, Block 15, Morning Side Addition?
A. Yes, sir.
Q. That was conveyed to you by Agnes Leftwich your daughter?
A. Yes.
Q. Did you pay her anything for that at the time?
A. I had some money in it.
Q. That is you had it in together?
A. Yes.
Q. As a matter of fact, or is it a fact, from the time you came to Tulsa we will say beginning in 1917 and up until the present time you and your daughter have had your property in common?
A. We had dealings together all the time.
Q. What you owned and the profits you made were joint?
A. No.
Q. Just what was your arrangement?
A. What she gave me she gave free and unhampered; she had no claim on what she gave me. She never claimed anything.
[fol. 151] Q. You put your money into properties together?
A. No she some times bought property but she gave it to me later.
Q. She gave you everything?
A. She did. I don't know she gave me everything she had but she gave me some property.
Q. She gave you everything you have?
A. No, I had money of my own.
Q. How much money did you have?
A. I think I explained to you at the last hearing.
Q. We never found out precisely.
A. I testified.

Mr. Martin: If the court please in the interest of time I want to say this, the examination of Mrs. Chamberlin the record will show Mr. Kates went entirely over her property.
The Referee: I believe the record is pretty full.
Mr. Kates: The record shows generally, if the court please, she bought things from time to time. She couldn't remember specifically what she bought and sold.
The Referee: I take it the examination you are making now compared with the original testimony will show.

Q. Lot 21 and the North half of Lot 22, Black 2, Abdoe Addition, your daughter conveyed that to you I believe in 1918?
A. Yes.
Q. Did you pay her anything for that?
A. No.
Q. She gave it to you?
A. No she didn't have very much in it; that place was paying for itself with the rents.
Q. You didn't pay her anything?
A. I might have given her a dollar or two.
Q. You sold that in 1920 and got $5,500.00 for it?
A. Yes, sir.

Q. You at one time owned Lots 10 and 11, Block 6, Abdoe Addition?

A. Same condition, it was paying for itself.

Q. You bought that from Ottis L. Snow?

A. Well didn't buy it directly from him; it was from a party that couldn't pay up.

Q. How much did you pay him?

A. I think about $4,000 but they had paid a thousand or something on it or 1700.

Q. But you paid then approximately $3,700 from the time you took it over?

A. No, it was paid by monthly payments.

Q. Can you remember how much you paid about that time?

[fol. 152] A. Paid about—I can't just remember the amount but I know it was being paid by the month.

Q. Now you testified that this farm at Broken Arrow was bought with money which your daughter gave you?

A. I claim that part of the money was mine.

Q. Do you know how much of it was yours?

A. Well I didn't keep track of our dealings. When I told her I wanted to buy this farm she sent it down; I don't remember just how much I had in it. She had my money using it.

Q. You don't remember how much?

A. I don't remember just exactly how much no, sir.

Q. Did you ever keep track of what your daughter owed you from time to time?

A. No we didn't.

Q. Did she keep track?

A. I think she was capable.

Q. But so far as you are concerned you never knew?

A. I trusted her to look after my affairs.

Q. That is to say the business you were doing you were doing jointly?

A. At that time.

Q. When did you quit doing business that way?

A. I just don't remember.

Q. Is there anything that would call your attention to why you quit business that way?

A. No I don't care to discuss that, it is a personal matter that I don't think concerns you.

Q. I will just try to fix the time.

A. Well I can't fix the time; I don't know.

Q. Did you do business that way in 1920?

A. No, sir.

Q. You kept track of everything she owed you in 1920?

A. She didn't owe me in 1920.

Q. Did you owe her anything in 1920?

A. No, sir.

Q. Did you *kept* track of what she owed you in 1919?

A. No.

Q. She didn't owe you anything?

A. No. I think we were putting everything into that house, I did.

Q. She had no interest?

A. No, sir.

Q. The money she furnished if she furnished any was to pay back what she owed you?

A. She gave it to me.

Q. So that whatever money she gave you was a gift?

A. Yes, sir.

Q. That went into that house?

A. Yes.

Q. Now Mrs. Chamberlin you have no means at all of figuring out how much of your money went into that farm at Broken Arrow?

A. No, I couldn't tell just exactly.

Q. Now if it were shown that the $9,500.00 that went for the purchase of that farm was $9,500.00 that was taken from the Western [fol. 153] Rope & Manufacturing Company would you say you had any interest in that money?

A. I don't know where she got the money.

Q. Did you ever know where she got any of the money?

A. I supposed she was making the money, they were prosperous; no, sir, I never knew.

Q. In the last two or three years she has given you as much as $50,000.00 at different times?

A. I don't think so; I never kept track. I never knew from what source it came.

Q. You never inquired?

A. No, she always told me she was going to make a million; I thought she was making lots of money.

Q. And you never made any inquiry?

A. No I didn't.

Q. And except for this farm in which you had some money the other money she gave you during 1919 nd 1920 was a gift?

A. Yes, sir. What she gave me was a gift that didn't belong to me.

Q. Have you any way of finding out what belonged to you?

A. I might.

Q. If you have no way of determining what belonged to you your funds were mingled together?

A. At the time that farm was bought.

Q. It was a kind of partnership between you?

A. At that time yes.

Q. Subsequent to that the same condition existed?

A. For a time yes.

Q. Well for all the time wasn't it?

A. No, sir.

Q. You say after a certain time you began to keep track what was yours?

A. No, I wasn't keeping any track. I didn't have the money, I had spent it on the house.

Q. During the time the house was being built she gave you a lot of money?

A. No, I told you I had approximately $34,000.00.

Q. The $34,000.00 came from your funds?

A. Yes sir.

Q. And none of it was by way of gifts?

A. She gave me those houses and I sold them.

Q. Then these cashier's checks from the Western Rope & Manufacturing Company none of that money went into the house?

A. Well I can't say where it went; I didn't find it on my statements.

Q. You mean your bank statements?

A. Yes, sir.

Q. Did you find them?

[fol. 154] A. I brought them here to you.

Q. You only brought a few?

A. That was all I had.

Q. This money from your daughter was a gift except the money from this farm?

A. It was a gift that she gave me.

Mr. Kates: That is all.

Mr. Martin: That is all Mrs. Chamberlin.

(Witness excused.)

Agnes C. Gessel produced, sworn and examined at the time and place above mentioned testified as follows:

Examination by Mr. Kates:

Q. Mrs. Gessel you have heard your mother testify that the time she bought this farm at Broken Arrow the $9,500.00 for the purchase was sent by you to her?

A. Yes, sir.

Q. Where did you get that $9,500.00?

A. I purchased it at the Central National Bank.

Q. You purchased it?

A. Yes, sir.

Q. Or did the Western Rope & Manufacturing Company?

A. I purchased it.

Q. You purchased it with funds of the Western Rope & Manufacturing Company did you not?

A. The check may have been the Western Rope & Manufacturing Company's but it was not their funds.

Q. Whose funds was it?

A. Mine.

Q. Your funds?

A. Yes, sir.

Q. Where were they, where did you keep those funds?

A. They must have been in the treasury of the Western Rope & Manufacturing Company.

Q. That is to say you had a credit balance of $9,500.00?

A. No, I didn't say that.

A. Mr. Gessel consented to give that $9,500.00

Q. Well then really the money was given to you by Ben Gessel?

A. Yes. Was it not charged to his account?

Q. I am asking if it was given to you?

A. Yes.

Q. Did he sign the check or did you?

A. I don't remember but I think he did.

Q. So he gave you this $9,500.00?

A. Yes, sir.

Q. And told you you could buy the farm with it. Mrs. Gessel you remember your testimony at the prior hearing with regard to the sale of that lot on Terrace Drive?

A. Yes, sir.

Q. You testified at that time you deposited the money to the credit of B. M. Gessel?

[fol. 155] A. I may have refreshed my memory on that. I looked up my bank statements——

Q. You testified I believe he directed you to deposit it to his credit in the bank?

A. Well it was made to me you know.

Q. Yes.

A. And I may have deposited it to my own account and then turned it over to him.

Q. In the Union National?

A. Yes.

Q. Have you got any way of finding out when you turned it back to him; you didn't turn it back to the Western Rope & Manufacturing Company?

A. No, I did not.

Q. You turned the $5,000.00 then over to B. M. Gessel?

A. Yes.

Q. You have got no way of determining how you turned that over to him have you Mrs. Gessel?

A. Well I have requested my statements from Mr. Byrd of the First National Bank who was formerly connected with the Union and promised to pay for them but I have been unable to get them as yet.

Q. So that in your former testimony you may have been mistaken about that?

A. I may have been mistaken.

Q. Mrs. Gessel in the year 1919 did you buy a considerable quantity of diamonds from Morris Wasserman?

A. No, not a considerable amount of diamonds.

Q. Didn't you buy about $18,000.00 worth?

A. If you would say $1,800.00 it would be nearer, but I don't believe it was even that much, and that was on a time basis.

Q. Did you buy any in 1917 from him any large quantity?

A. No, sir.
Q. You have had considerable diamonds in your day?
A. Yes, sir.
Q. Where did you buy them?
A. B. M. Gessel gave them to me.
Q. So you really didn't purchase any yourself except a few?
A. For a few gifts.
Q. Have you still got those diamonds?
A. I have them.
Q. All of them?
A. The two stones that I had I still have.
Q. Have you got the one Ben gave you?
A. I have both of them he gave me.
Q. Were they the only ones he gave you?
A. Yes.
Q. How large were those?
A. I presume they weighed about nine carats.
Q. The two together?
A. Yes.
[fol. 156] Q. I guess you keep those in a safety deposit box don't you?
A. When I don't need money to live off of I do.
Q. Well are they at the present time clouded with any claims like that?
A. Very muchly so.
Q. What bank are they in?
A. In Denver.
Q. What bank in Denver?
A. Not a bank in Denver.
Q. In a private establishment?
A. Yes.
Q. What is the name of it?
A. I can't recall just now.
Q. Haven't you got a slip?
A. I have a slip somewhere in my possession yes.
Q. Well now can't you recall the name?
A. No, I can't.
Q. Mrs. Gessel do you remember a transaction by which the Allendale Oil Company paid its account to the Western Rope & Manufacturing Company by Liberty Bonds?
A. Yes, sir, I do.
Q. What happend to those bonds?
A. I turned them over to Mr. Gessel and I believe he sold them through Houston Fible & Company; there was only one bond of $1,000.00 and one of $100.00.
Q. But they were turned over to the Western Rope & Manufacturing Company?
A. Yes, sir.

(Witness excused.)

W. C. CRAIG produced, sworn and examined at the time and place above mentioned testified as follows:

Examination by Mr. Kates:

Q. Mr. Craig I will ask if you have made an examination of the bank account of the Western Rope & Manufacturing Company, A. C. Leftwich, who is the same person as Agnes Gessel, and Anna B. Chamberlin and E. S. Chamberlin?

A. I have.

Q. From your examination you can now take up the bank account of A. C. Leftwich, who is the same as Agnes Gessel, in the American National Bank. Now explain to the court just what your examination of the account of A. C. Leftwich in the Union National Bank discloses during the years 1917, 1918, 1919 and 1920.

A. It discloses certain deposits on various dates which correspond with charges to B. M. Gessel's account in the Western Rope Company's books on the same dates.

Q. Explain in detail those charges.

A. The following shows the details of the checks given the date and the number and the amount, to whom payable and in which bank deposited:

[fol. 157] 3-13-17, Check No. 1840, 350.00. Payable to A. C. Leftwich, endorsed A. C. Leftwich. (Have check.)

4-28-17, Check No. 2000, 200.00. Payable to A. C. Leftwich, endorsed A. C. Leftwich, deposited her account 4330-1, 4-30-17. (Have check.)

5-11-17, 2034, 345.18. Payable to A. C. Leftwich, endorsed A. C. Leftwich. (Have check.)

5-28-17, 2097, 1,000.00. Payable to B. M. Gessel, endorsed by A. C. Leftwich, deposited A. C. Leftwich account 5-29-1917. (Have check.)

2-8-18, 241, 1,000.00. Payable to A. C. Leftwich. Check and voucher missing. Deposit this amount in her account 2-8-18.

3-2-18, 308, 95.00. Payable to A. C. Leftwich. Check and voucher missing.

3-7-18, 336, 1,000.00. Voucher receipted by A. C. Leftwich. Check missing. Deposit this amount A. C. Leftwich account 3-12-1918.

4-12-18, 469, 500.00. Check payable to A. C. Leftwich. Deposited her account 4-13-18.

4-18-18, 486, 4,000.00. Central National Bank deposit in account of A. B. Chamberlin.

5-28-18, 671, 775.00. Check payable to B. M. Gessel. Deposit in A. C. Leftwich account of $1,000.00, May 31, 1918.

8-7-18, 820, 200.00. Check and voucher missing. Dep. A. C. Leftwich account same amount, same date.

9-4-18, No no., 500.00. Payable to A. C. Leftwich. Woolf Brothers. Have check.

10-30-18, 944, 1,000.00 Check and voucher missing. Deposit in A. C. Leftwich account, same amount, same date.

11-12-18, 946, 900.00. Payable to A. C. Leftwich. (Have check.)
4-5-19, 1087, 1,506.67. Payable to American National Bank. Cashier's check purchased for Anna B. Chamberlin this amount. Deposited to her account.
4-26-19, 1189, 134.70. Payable to A. C. Leftwich. Deposited in her account same date. (Have check.)
4-30-19, 1260, 5,060.00. Payable to American National Bank. Cashier's check purchased for O. K. Eysenbach.
2-28-19, 852, 1,507.00. Payable to American National Bank. Voucher missing. Deposit this amount to A. C. Leftwich account 3-11-19.
7-7-19, 1671, 2,000.00. Payable to American National Bank. [fol. 158] Voucher missing. Cashier's check purchased for J. T. Blair this amount.
8-12-19, 1938, 3,740.97. Payable to American National Bank. Cashier's check purchased for this amount for Anna B. Chamberlin and deposited her account.
11-17-19, 2634, 3,555.80. American National Bank. Cashier's check purchased for J. T. Blair this amount.
10-9-18, 230, 500.00. Payable to A. C. Leftwich. Check missing. Deposit in A. C. Leftwich account this amount this date.
10-17-18, 254, 500.00. Payable to A. C. Leftwich. Check missing. Deposit in A. C. Leftwich account this amount this date.
6-26-20, Mfg. Dept., 446, 1,000.00. Payable to A. C. Leftwich. Check missing. Deposit in A. C. Leftwich account this amount.
7-13-20, Mfg. Dept., 556, 1,000.00. Deposit in A. C. Leftwich account this amount, this date, see stubs.
7-17-20, Mfg. Dept., 597, 1,000.00. Deposit in A. C. Leftwich account this amount, this date. See stubs.
8-26-20, 395, 500.00. Payable to A. C. Leftwich. Deposit this amount in her account.
10-22-20, 576, 500.00. Payable to A. C. Leftwich. Deposit this amount in her account. Exchange National Bank.
1-28-21, 776, 500.00. Check payable to Mrs. B. M. Gessel. Deposited to her account.
9-15-17, 2479, 9,500.00. Cashier's check to A. B. Chamberlin. Deposit Broken Arrow Bank.
2-4-18, 232, 4,000.00. Central National Bank.

In addition to the foregoing the check dated July 25, 1919, No. 1765 payable to M. A. Housen for $600.00, and one of August 9, 1919, No. 1925 for $150.00 payable to Vivienne Hudlin, and one of August 5th, No. 1901, for $100.00, payable to Doctor Berthe Margolin, were all charged to general expense account, when as a matter of fact they covered personal expenses of an illness of Mrs. A. C. Gessel.

The Terrace Drive property sold to S. W. Mitchell for $5,000.00. This money would appear to have been deposited in the account of Mrs. A. C. Leftwich at the Union National Bank on February 10, 1921, with the exception of $500.00 which was withdrawn in cash at the time the deposit was made.

Examination of the account of Mrs. A. C. Leftwich shows deposits

on certain dates corresponding with withdrawals from the account of [fol. 159] B. M. Gessel and the books of the Western Rope & Manufacturing Company show that on or about the same dates there was charged to B. M. Gessel certain sums by way of checks which do not show as deposits in B. M. Gessel's personal account.

Union National Bank			Exchange National		
	A. C. Leftwich deposit		B. M. Gessel withdrawn		Western Rope deposit
2-20-18	800.00	800.00	2-21-18	.....	.....
5-14-18	2,000.00	2,000.00	5-15-18	Ck. 607 5-14..	2,000.00
7- 8-18	3,000.00	3,000.00	5- 9-18	Ck. 79 (7-27).	6,000.00
8- 5-18	4,000.00	4,000.00	8- 6-18	Ck. 814 (8-5).	4,000.00
9- 3-18	750.00	750.00	9- 4-18	Ck. 168 (9-2).	750.00
9-25-18	1,500.00	1,500.00	9-26-18	.....	.....
			American National Bk.		
11-27-18	1,400.00	1,400.00	11-29-18	Ck. 160 (11-26).....	3,000.00
12-13-18	832.00	832.00	12-14-18	Ck. 266 (12-12).....	1,000.00
1-10-19	500.00	500.00	1-11-19	.....	.....
2-15-19	250.00	250.00	2-17-19	.....	.....
3- 3-19	500.00	500.00	3- 4-19	Salary (3-1)..	750.00
3-24-19	200.00	200.00	3-25-19	Ck. 882 (3-10)	500.00
3-29-19	300.00	300.00	3-31-19	Salary (3-29).	750.00
5- 7-19	325.00	325.00	5- 8-19	1310 (5-9)...	500.00
5-16-19	2,000.00	2,000.00	5-17-19	.....	.....
5-27-19	500.00	500.00	5-28-19	.....	.....
7-11-19	300.00	300.00	7-12-19	.....	.....
8-15-19	1,000.00	1,000.00	8-16-19	.....	.....
8-27-19	2,500.00	2,500.00	8-28-19	Ck. 2017 (8-27).....	3,325.00
9- 8-19	2,000.00	2,000.00	9- 9-19	Salary (9-8)..	750.00
9-22-19	500.00	500.00	9-23-19	Ck. 2213 (9-22).....	1,000.00
1- 6-19	500.00	500.00	10- 7-19	2340 (10-7)..	1,000.00
10-30-19	1,000.00	1,000.00	10-30-19	2483 (10-30).	2,000.00
11- 3-19	500.00	500.00	11- 4-19	.....	.....
11-12-19	1,000.00	1,000.00	11-13	.....	.....
11-25-19	500.00	500.00	11-25	Salary (11-22)	750.00
12- 5-19	700.00	700.00	12- 6	.....	.....
12-23-19	1,000.00	1,000.00	12-27	2919 (12-27).	1,500.00
1- 6-20	3,000.00	3,000.00	1- 6-20	3979 (1-6)...	3,000.00
1-31-20	1,500.00	1,500.00	2- 3	Salary (2-2)..	1,000.00
				2329 (2-3)...	500.00
3-20-20	6,160.00	6,160.00	3-20	.....	.....
5-25-20	1,053.75	1,053.75	5-27	272 (5-26)...	1,000.00
5-27-20	1,532.40	1,532.40	5-28	.....	.....

American National

	A. C. Leftwich deposit		B. M. Gessel withdrawn		Western Rope deposit
5-18-17	500.00	500.00	5-18	2053 (5-15)..	1,000.00
6-18-17	1,000.00	1,000.00	6-18	2121 (6-6)...	1,000.00
[fol. 160]					
7-12-17	1,200.00	1,200.00	7-13	2237 (7-12)..	1,500.00
7-19	825.00	825.00	7-19	.....	.....
8- 6	890.00	890.00	8- 7	.....	.....
8-28	1,200.00	1,200.00	8-29	2398 (5-26)..	1,000.00

Union National

Central National

5-18-17	500.00	500.00	5-18	2053 (5-15)..	1,000.00
6-18-17	1,000.00	1,000.00	6-18	2121 (6-6)...	1,000.00
7-12-17	1,200.00	1,200.00	7-13	2237 (7-12)..	1,500.00
7-19	825.00	825.00	7-19	.....	.....
8- 6	890.00	890.00	8- 7	.....	.....
8-28	1,200.00	1,200.00	8-29	2398 (8-28) .	1,000.00

Union National

Central National

10-17-17	500.00	500.00	10-18	2509 (10-8)..	3,000.00
10-25-17	728.92	728.92	10-26	2553 (10-25).	1,000.00
11-14-17	900.00	900.00	11-15	.....	.....
12- 5-17	2,000.00	2,000.00	12-26	.....	.....
12-26-17	2,000.00	2,000.00	12-27	88 (12-26)...	2,000.00
1-30-18	2,200.00	2,000.00	1-31	93 (1-26)....	2,000.00
2-23-18	1,000.00	1,000.00	2-25	299 (2-23)...	1,000.00
5-13-18	900.00	900.00	5-14	554 (5-4)....	1,000.00

Further examination of the account of Mrs. A. B. Chamberlin in the Union National and the Producers' State Banks show deposits on same dates as withdrawals from the account of B. M. Gessel in the American National. Full details are as follows:

	Deposits, Anna B. Chamberlin, Union National			Withdrawals, B. M. Gessel, American National
10- 2-18	375.00	375.00	10- 3	....
11-12-18	500.00	500.00	10-13	....
11-27-18	700.00	700.00	11-27	....
1-18-18	1,500.00	1,500.00	1-20	....

Producers' State

9-16-19	600.00	600.00	9-17	....
10-13-19	2,566.50	2,566.50	10-13	....

(Witness excused.)

Whereupon an adjournment was taken until Wednesday, November 2, 1921.

[fol. 161] At Tulsa, in said District, on This the 17th Day of February, 1922, Before Honorable A. F. McGarr, Referee in Bankruptcy

[Title omitted]

TESTIMONY TAKEN FOR USE IN GENERAL BANKRUPTCY CASE

APPEARANCES OF COUNSEL

Phillip Kates, for trustee in bankruptcy.
Edgar A. de Meules, for certain creditors.
H. B. Martin, Mr. Reynolds, for Anna B. Chamberlin et al.

W. C. CRAIG, produced, sworn and examined at the time and place above mentioned testified as follows:

Examination by Mr. de Meules:

Q. You are the same Mr. Craig who has heretofore testified in this bankruptcy proceeding?
A. Yes, sir.

Mr. Martin: Let it appear that Mrs. Gessel and Mrs. Chamberlin are appearing here but not waiving their objections heretofore made to the jurisdiction of the court over them as parties to the bankruptcy proceeding, and that this appearance is only subject to the petition to the court that is now pending.

Mr. de Meules: Mr. Referee I think Mr. Craig was examined at length at previous hearings as to his qualifications. I believe he was appointed by this court.

The Referee: That is correct.

Mr. de Meules: To examine the books and records of the bankrupt company and I think he is also qualified as being in charge of the records at Xenia.

The Referee: Let the record show that.

Q. Mr. Craig from the books and records of the Hoover & Allison Company what did the Western Rope owe that company say on the 1st of April, 1919, or about that time? Just pick out a date there along about the first of April?
A. $50,000.00 approximately.
Q. Can't you show the figures exactly?
A. $55,843.23.
Q. Now did Hoover & Allison and the Western Rope continue to do business—what is that date?
A. April 2nd.
Q. Subsequent to April 2, 1919?
A. Yes.

[fol. 162] Q. As I understand it the Western Rope bought merchandise and Hoover & Allison sold it to them and the Western Rope remitted from time to time?
A. Yes.
Q. In general course of business. I wish you would trace the

amount of indebtedness owing by the Western Rope to Hoover & Allison down to the close of business on December 31, 1919, giving reference to dates on which the indebtedness was incurred.

A. Well on consignment account Western Rope owed Hoover & Allison Company a total of $37,447.58.

Q. On what date?

A. December 31, 1919, which is made up of sales during August, 1919, October, 1919, November, 1919, and December, 1919.

Q. Now I wish you would give the dates of the different months.

A. From August 1st to August 31st, and from October 1st to October 31st, November 1st to November 30th, December 1st to December 31st. Then in addition the Western Rope were indebted to Hoover & Allison for $5,646.96 covering eight cables sold some time in November, 1919, for $3,436.02 and during the month of December, 1919, three cables for the value of $2,260.91. These are separate because these particular cables were sold after the Western Rope had been served with notice not to dispose of any more of their property. Then there was a further sum owing of $8,490.32 on straight sales account.

Q. What dates and the amounts?

A. The earliest item dates back to May 15, 1918.

Q. How much.

A. $1.54.

Q. You had better give the dates and the amounts of those charges?

A. July 23, 1918, $8 50; August 15th, $2,328.25; August 17th, $1,574.61; August 24th, $12.00.

Q. That is 1918?

A. Yes, all of these. September 4th, 1918, $49.24; August 24, 1918, $215.57; September 10, 1918, $64.04; April 29, 1919, $30.10; May 2, 1919, $43.89; June 21, 1918, $29.24; June 21, 1919, $18.98; July 3rd, $47.42; July 3rd, $194.03.

Mr. Martin: That is 1919, is it?

A. Yes. July 3, 1919, $50.14; July 3, 1919, $39.41; July 3, 1919, $272.69; July 3, 1919, $157.57; July 25, 1919, $4,654.81; July 5th, $16.56; August 18, 1919, $262.22; August 21, 1919, $270.02; August 11, 1919, $78.21; August 24, 1919, $2.57; November 4, 1919, $4,652.95; December 31, 1919, $338.75.

Q. Now have you read into the record—these were direct sales accounts?

A. Yes, sir.

[fol. 163] Q. Have you read into the record the charges on consigned sales account for a like time?

A. No.

Q. Will you do that please?

Mr. de Meules: The record we claim shows commencing April 30th up to September or October, 1919, funds were being extracted continuously in the erection of that house out there and also in the erection of the property. This goes to show we were creditors at that time.

Mr. Martin: I think what Mr. de Meules is calling for he wants the dates of the various items between April 2nd——

Mr. de Meules: And December 31st.

A. On April 10, 1919, we charged them with March consigned sales of $12,973.02. On April 30, 1919, we charged them with April sales of $17,469.18; and on June 4th, 1919, we charged them with May sales total $14,223.55; on July 2, 1919, June consigned sales $20,278.62; August 11, 1919, July sales $19,848.50. September 15, 1919, August consigned sales $18,072.77. October 4, 1919, September consigned sales $16,363.25. November 20th, 1919, for October 1919 consigned sales $12,319.23. December 24th, 1919, for November sales $5,418.84. December 31st for December sales $1,636.74.

Q. Can you give the dates of payments made in cash and the amounts commencing say with April 2, 1919?

A. On the consigned sales or the straight sales?

Q. Both.

A. I will give the straight sales first.

Mr. Martin: May I ask a question to save time after while?

Mr. de Meules: Yes.

Mr. Martin: This balance you have of $55,000.00 on the 2nd of April, was that account made up for straight or consigned sales?

A. Including both. April 7, 1919, cash forty cents. May 27, 1919, $3,439.43. Same date $1,186.46. Same date $63.02. June 5, 1919, $406.91. Then some more small credit memorandums aggregating approximately $2,000.00.

Q. Between?

A. Between October 4, 1919, and December 29, 1919. Consigned sales payments: April 7, 1919, $15,528.49. That includes discounts?

Q. Well that is the total credit?

A. Yes. April 7, 1919, a note.

Q. Just the cash sales.

Mr. Martin: Well you had better give them all because I will ask for them.

[fol. 164] Mr. de Meules: Well these notes were never paid.

Mr. Martin: Well I think they were.

Mr. de Meules: No we sued on them and got judgment.

Q. Go ahead, give them all.

A. Note No. 4999 for $14,919.53.

Q. Now was that note ever paid?

A. Yes, that note was paid.

Q. But when they gave the note you credited it on the account?

A. Yes.

Q. Then took the notes over into notes payable account?

A. Notes receivable. May 1, 1919, $6,576.72 cash and discount. Same date a note No. 5000 $6,918.41.

Mr. Martin: Was that note paid, Mr. Craig?

A. Yes. May 26, cash and discounts $1,850.43. May 27th, note No. 5017 $6,189.96.

Q. Was that note ever paid?

A. Yes. June 23, 1919, cash and discounts $6,170.05. June 24th, note #5041 for $5,885.57.

Q. Paid?

A. Paid. July 28, cash $9,070.66. July 29th, note #5066 for $10,000.00, paid. October 4, 1919, discount item $405.57. October 17, 1919, cash $15, 943.79. This check was dishonored but ultimately paid. On the same date note #5090 for $15,943.79. This note was never paid.

Mr. Martin: What is the date of the note?

A. The date of the credit was October 17, 1919, and then there was a discount item October 17th, $327.27. In addition to these cash and note credits there were allowances and credit memorandums between April 2, 1919, and December 31, 1919.

Q. Let me understand this, is this a correct situation: The Western Rope had on hand stock which you had sent them on consignment?

A. Yes.

Q. Then during the month that they would sell out of that stock, the Western Rope?

A. Yes.

Q. And at the end of the month they would make up a report showing how much of the consigned stock had been sold during the month?

A. Yes.

Q. And you would charge them for the amount due you on account of those sales for the previous months?

A. Yes.

Q. That happened to all the consigned sales that you mentioned?

A. Yes, and the accounts show various dates because the reports didn't always come in on the same dates.

Mr. de Meules: That is all.

[fol. 165] Cross-examination by Mr. Martin:

Q. Mr. Craig, those credits as they appear on the books of Hoover & Allison are merely general credits first on the sales account and second on the consigned account?

A. Yes, they are credited as that.

Q. Applicable to the oldest date?

A. Not necesarily.

Q. Well it was not limited to any particular bill of goods on the books of your company.

A. They were applied when they particularized in their remittance.

Q. Were there any of those remittances that you have described applicable to any particular bill or invoice?

A. Yes.

Q. I wish you would point those out.

A. The simplest way to do that would be in the case of consigned credits, they were always on particular invoices.

Q. Were they?

A. Because the terms of the sale provided that the settlement should be applied in the year 1919 on the basis of 50% in note and 50% in cash and every consigned invoice was taken care of in that manner.

Q. The original indebtedness that existed on April 2nd was first paid off was it not?

A. In the case of consigned sales yes.

Q. So that whatever of the original $55,000.00 had come from the consigned sales account on April 2nd was paid by the Western Rope.

A. On the consigned sales yes.

Q. Now how much of that account came from the general sales account, how much of that item of $55,000 if any came from the sales account?

A. Approximately $4,000.00.

Q. There was about $4,000.00 in the original $55,000.00 on April 2nd that came from the general sales account?

A. That is correct.

Q. And that was paid?

A. It was not paid as a particular item by credits that came subsequently to clear up but in addition we continued to supply them with direct sales.

Q. Subsequent shipments for which you made your charges?

A. For which we made new charges.

Q. Mr. Craig you have in your possession or you have examined the books of the Western Rope all their books have you not?

A. Yes.

Q. In which they kept their accounts at the time of bankruptcy and before. I wish you would state to the reporter whether or not an item of $9,500.00 appears in the books of the company to have [fol. 166] been charged to the account of B. M. Gessel about September 18, 1917?

A. Yes.

Q. Near that time was there any other item of $9,500.00 charged to his account?

A. No, that item is September 15, 1917, and is payable to the Central National Bank being check #2479.

Q. Do you know from your examination of the books whether that is the check that Mrs. A. C. Leftwich used at the Central National Bank?

A. I didn't personally examine that item.

Q. From the examination that you have made in auditing these books you found that to be a fact did you?

A. I found it to be a fact that this was charged to Mr. Gessel.

Q. That that particular item of $9,500.00 was used at the Central National Bank by Mrs. Gessel who was then Mrs. Leftwich?

A. No I did not personally.

Q. You didn't ascertain that?

A. No.

Q. When Mr. Craig was it that you first received the books of the company?

A. I believe it was the end of June, 1920.

Q. Have you found from your examination and acquaintance——

A. Wait a minute, 1921, I guess.

Q. Do you know from your examination and acquaintanceship of the books since you have had charge of them in whose handwriting that entry was made in Mr. Gessel's account?

A. No, because I was not familiar with the handwriting of the different clerks that made the entries.

Q. You didn't learn so that you would be able to testify to it in whose handwriting that entry was made?

A. No I didn't.

Mr. Martin: I believe that is all.

Redirect examination by Mr. de Meules:

Q. At all times from April 2, 1919, up until December 31, 1919, the Western Rope was indebted to the Hoover & Allison Company?

A. They were.

Q. Never was a time when they were not a creditor during that time?

A. Never.

Q. You have filed in this case a claim based upon a judgment in the case of Hoover & Allison vs. Western Rope?

A. Yes.

Q. That was for the balance due from December 31, 1919, as reduced by the trial court?

A. Yes.

Q. Based upon this account which you have just detailed?

A. Yes.

[fol. 167] Mr. Martin: And the items included in that judgment are reflected in the testimony that you have just given?

A. Yes.

(Witness excused.)

Mr. Martin: I will ask your honor to continue this matter until I have an opportunity to enlarge this order to hear everything on behalf of the defendant because I have some very important evidence to introduce.

The Master: I see no objection to that.

Schedule B

No. 2391

In the Matter of WESTERN ROPE & MANUFACTURING CO., a Bankrupt

Testimony Taken in Support of Petition for Summary Order on the Jenks Road Property and to Deliver to Trustee $10,000.00

B. M. Gessel—2, Mrs. Slominski—11, W. C. Craig—14-30, Agnes C. Gessel—18, Phillip Kates—37.

Filed June 1, 1922, W. V. McClure, Clerk U. S. District Court.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA

In Bankruptcy. No. 2391

In the Matter of WESTERN ROPE & MANUFACTURING COMPANY, a Bankrupt

At Tulsa, in said district, on this the 22nd day of February, 1922, before Honorable A. F. McGarr, Special Master.

Hearing on petition of George Harrison, Trustee in Bankruptcy, for summary order against Anna B. Chamberlin to pay into court $10,000.00.

Also hearing on petition involving the Jenks Road property.

Appearances: George Harrison, Trustee, in person and by his counsel Phillip Kates, Esq. Edgar A. de Meules, H. B. Martin, Mr. Reynolds, for respondent.

Mr. Kates: The trustee offers in evidence the testimony taken at the various hearings in the bankruptcy case.

Mr. Martin: Comes now the respondent and objects to the consideration of any of the testimony taken at the hearings upon the [fol. 168] ground that the same is ex parte and incompetent as to this respondent, and objects to the introduction of any proof under the allegations of the petition or application upon the ground and for the reason that the same does not state facts upon its face sufficient to give the court jurisdiction, first; and second, does not state facts sufficient to constitute any cause of action in favor of the movant and against this respondent.

The Master: I am going to overrule the objection. That can all be argued before the court. I take it that the pleadings have been settled.

Mr. Martin: Let us take our exception to the introduction of proof.

B. M. GESSEL, produced, sworn and examined as a witness for and on behalf of the Trustee, testified as follows:

Direct examination by Mr. Kates:

Q. You are the B. M. Gessel that was president and general manager of the Western Rope & Manufacturing Company?
A. Yes, sir.
Q. You were also president and general manager of the Western Rope & Cordage Company?
A. I think not.
Q. Who was president?
A. Mrs. Leftwich.
Q. When the Western Rope & Manufacturing Company was organized it was practically a successor to the Western Rope and Cordage Company?
A. Yes, sir.
Q. It took over the business and continued the business of the Western Rope and Cordage?
A. Yes, sir.
Q. It was in effect the same company doing business under an enlarged capital?

Mr. Martin: That is objected to as a conclusion.
The Master: Sustained.

Q. Mr. Gessel if the record in the bankruptcy case discloses that on or about September 18, 1917, $9,500.00 was withdrawn from the funds of the Western Rope and Cordage Company or Western Rope & Manufacturing Company, as the case might be, at that time, and used by Mrs. Leftwich or Mrs. Chamberlin, will you state whether or not that was done with your knowledge and consent?

Mr. Linn: Your honor we object to that because it has already been testified to in the record that he did not authorize any withdrawal of this amount.
The Referee: That is in the record.
Mr. Kates: Will there be any objection to his answering it again?
[fol. 169] Mr. Linn: Yes, sir.
The Referee: Objection overruled.

A. Neither the Western Rope & Cordage Company or the Western Rope & Manufacturing Company ever had any business with Mrs. Chamberlin.
Q. I asked whether or not if on September 18, 1917, about that time $9,500.00 was withdrawn from the funds of either of these companies and charged to your account and used by Mrs. Leftwich or Mrs. Chamberlin whether that was done with your knowledge and consent?
A. For her personal use?
Q. Yes, sir.
A. Not with my knowledge.

Q. When did you first learn of any such withdrawal and charge to your account?

A. I heard about it within the last month. ?

Q. Mr. Gessel at that time, in fact all during the business of the Western Rope & Cordage Company and Western Rope & Manufacturing Company you may state whether or not it was your practice to leave signed checks in blank with Mrs. Leftwich in the office?

A. I always left signed checks in my absence in the office.

Q. So if this check should appear to be signed by you the amount and payee would have been filled in without your knowledge and consent?

A. The checks were always supposed to be for bills that might become due in my absence.

Q. And that was all?

A. Yes, sir.

Mr. Kates: That is all.

Cross-examination by Mr. Martin:

Q. Mr. Gessel, in 1917 on September 18th the bankrupt company the Western Rope & Manufacturing Company was not yet in existence was it?

A. I can't state from memory as to when the change was made.

Q. The change was made on the 30th day of September, 1917, was it not?

A. I rather think that is right.

Q. You and Mrs. Leftwich were the owners of all the stock of the Western Rope & Manufacturing Company were you not?

A. Yes, sir.

Q. And you didn't owe any debts except current debts at that time?

A. That is all.

Q. Paid them every month?

A. Yes, sir.

Q. You owed none of the claims that are now proven here in this case against the Western Rope & Manufacturing Company did you? [fol. 170] A. I don't think unless they were people with whom we were doing business from month to month.

Q. You paid them except a note you had in the Central National Bank you paid all your bills every month did you not?

A. Yes, sir.

Q. You did about a million seven hundred thousand dollars businesses in the year 1917?

A. I don't know the figures, a big business.

Q. You took money for your personal use and Mrs. Leftwich did the same thing at that time whenever you pleased from the business of the company didn't you, Mr. Gessel; you didn't owe anything and didn't have any stockholders who were concerned?

A. I can't just say Mrs. Leftwich took money for her personal use.

Q. You permitted it right along did you not?

A. No, sir.

Q. Didn't you frequently give her money?

A. I have given her money.

Q. You gave her money that was out of the Cordage Company's account right along didn't you?

A. No.

Q. It belonged to you and her, nobody else had any interest in it?

A. I didn't do it; I didn't allow Mrs. Leftwich to take money out of the company or anyone else.

Q. You left signed checks in Mrs. Leftwich's hands with absolutely no limit on them?

A. As to my confidence in her there was no limit.

Q. And as to the authority there was no limit?

A. No, she would pay the bills that came due.

Q. Mr. Gessel you received every month from the bookkeeper or some of the employees in the office a statement of your account in writing for that month?

A. Not at that time, later on.

Q. When did you commence that practice?

A. I think 1919.

Q. You had access, the fact is you were secretary of the company at that time and the keeping of the books of the company was directly under your charge?

A. It may have been but I didn't have much to do with them.

Q. There was no time after the 18th day of September 1917 that you could not have seen the entries that were made on that date of this $9,500.00 if you cared to look?

A. If I had cared to look it up I don't suppose there would have been anything I couldn't have seen.

Q. All these books were under your control and charge at all times there?

[fol. 171] A. I never looked at the books.

Q. You delegated somebody else to do that for you?

A. Absolutely, Mrs. Leftwich had charge of the books.

Q. Mrs. Leftwich never did keep those books did she?

A. She did until it became necessary to hire extra help.

Q. At the very early part of the business, but in 1917 Mrs. Leftwich had nothing to do with the keeping of the books?

A. She has always had charge of the books.

Q. She had charge of the office but she didn't keep the books did she?

A. No, I don't think she made the entries.

Q. Mr. Gessel about that time besides the relationship of being the stockholders and manager and owners of this concern you were paying court to Mrs. Leftwich were you not and you afterwards married?

A. Yes, sir.

Q. And the relations between you and Mrs. Leftwich then were upon a very liberal basis were they not, all of your relations with reference to your financial and business affairs and welfare?

Mr. Linn: Your honor we object to that.

Mr. Kates: I think the trustee objects.
The Master: That seems to me material. Objection overruled.

A. Well I don't know that I just exactly understand what you are trying to get at, Judge.
Q. Well she and you were working together to build up the business and she was giving her relations and her ability to it and you were doing the same thing; you together owned the stock and you together participated in the profits of your enterprise didn't you at that time?
A. Well I think I owned the greater part of the stock and if it is getting down to the matter of my personal respect and feeling towards Mrs. Leftwich——
Q. You had the highest respect for her?
A. Absolutely.
Q. And you treated her accordingly?
A. Absolutely.
Q. And you recognized the fact that she was entitled to some of the benefits of the great prosperity that you and she were enjoying at that time didn't you?

Mr. Linn: We object to that as a conclusion.
Mr. Kates: The trustee objects.
The Master: The objection is overruled.

A. You will have to make that just a little bit plainer, Judge.
Q. You and Mrs. Gessel didn't withdraw money from this concern by means of dividends did you?
[fol. 172] A. You refer to Mrs. Leftwich now?
Q. Yes, who afterwards was Mrs. Gessel, you didn't take dividends but you did take money?
A. Mrs. Leftwich never took dividends from this company.
Q. Well she owned stock in it?
A. How much?
Q. According to the books; I don't remember, but you didn't take any dividends either did you?
A. No, sir.
Q. But you did recognize the fact that you were both entitled?
A. No you are absolutely wrong; if Mrs. Leftwich at that time had asked me for anything in the world she could have had it but she didn't have the right to take money out of this company.
Q. You don't remember whether you talked about that $9,500 at that time?
A. What does the $9,500.00 stand for?
Q. I say you don't remember now whether you and Mrs. Leftwich discussed it at the time or prior to the time that this thing happened?
A. Just to be a little bit plain, Judge, do you mean to say by that that I gave Mrs. Leftwich $9,500.00?
Q. Q. No, I say you don't remember whether before that money was taken out of the Western Rope & Cordage Company you and Mrs. Leftwich discussed it?
A. For her benefit it was taken out?

Q. Yes.

A. I never discussed it for her benefit.

Q. If she had asked you permission would have been granted?

A. I don't think I would have refused her anything, but she did not discuss it with me.

Q. Now then, Mr. Gessel, when you came up to the Western Rope and Manufacturing Company just what was done about the old company and the new?

A. I think it was just a reorganization and took over the assets of the old company and went on doing business.

Q. You organized the Western Rope & Manufacturing Company, incorporated it?

A. Yes.

Q. All of the stock except nominal shares were in the hands of you and Mrs. Leftwich?

A. I don't think there was any more than one share in her hands at the time.

Q. All the balance was in your hands?

A. I think so as I remember it.

Q. And the Cordage Company owed no debts at that time?

A. Other than just the current debts.

Q. And they were paid when they became due?

A. Yes.

[fol. 173] Q. So that you and Mrs. Leftwich as the owners of this corporation and having no liabilities to any stockholders or to any creditors turned over the property that the Cordage Company then had to the new company in consideration of the stock of the new company after it was organized?

A. Well I don't just exactly get the idea of me and Mrs. Leftwich being the owners of the company; as I remember I owned all the stock with the exception of one or two shares; at that time I don't think she had the stock.

Q. Assuming for the purpose of this question that Mrs. Leftwich didn't have some of this stock then this is what happened: you as the owner of the Cordage Company disembarrassed of any claim of stockholders or creditors turned over the property that the Cordage Company then had to the new company in consideration of the stock of the new company?

A. Yes, that is right.

Q. That is exactly what you did, wasn't it?

A. Yes.

Q. When that was done you had an audit made didn't you to ascertain what property the old company had to turn over to the new company?

A. I think there was an audit.

Q. That is what was known as the Mendenhall audit?

A. I think that was made after it was turned over.

Q. That was made by Mr. Mendenhall and who else?

A. Wright of Kansas City.

Q. They made up their report to you?

A. They made up a regulation auditor's report.

Q. And at that time if not before you saw the cancelled checks of the Western Rope and Cordage Company that had been paid at the bank did you not?

A. I never looked them over; I never thought about it.

Q. How long was it then after the sale of the assets of the Cordage Company, or after the transfer as you have described it, was it before the Western Rope & Manufacturing Company became embarrassed in the conduct of its business?

A. Well I don't think the Western Rope & Manufacturing Company was ever embarrassed in business—it became apparent we needed more funds along in 1919 and 1920.

Q. How long was it after that transfer was made from the Cordage Company to the present bankrupt company before any other stock except the stock held by you and Mrs. Leftwich was issued to any other person?

A. I don't know just when the stock was issued to Mr. Treft of Buffalo, but that is the only stock tha. ever was issued outside of hers and mine; I think that was about April, 1920, however I don't know the dates.

Q. Anyhow that was some time in 1920?

A. I didn't say absolutely, but that was the only stock ever was issued.

[fol. 174] Q. And when Mr. Treft became a stockholder it was under the express understanding that what money had been taken out and charged to your personal account would not be repaid to the company?

A. That was my understanding, that he was perfectly satisfied. I think I have testified to that before.

Mr. Martin: Yes, I think you did before. I believe that is all.

Mr. Kates: That will be all.

(Witness excused.)

The Master: Who is your next witness, gentlemen?

Mr. Kates: That is all.

Mr. Martin: If the court please, the respondent now moves for the dismissal of the petition upon the ground and for the reason that the evidence offered on behalf of the trustee is not sufficient to prima facie show any right of action in the trustee and against the respondent.

The Master: Motion overruled.

Mr. Martin: We except.

Mrs. Slominski, produced, sworn and examined as a witness for and on behalf of the respondent, testified as follows:

Direct examination by Mr. Martin:

Q. Your name was formerly Miss Howard?

A. Yes.

Q. What is your name now

A. Slominski.

Q. You were at one time in the employ of the Western Rope & Cordage Company were you, Mrs. Slominski?

A. Yes.

Q. What was the capacity of your employment there?

A. I was stenographer.

Q. Who at that time was the bookkeeper, who kept the books?

A. Well they had different bookkeepers. Mr. Hilvey, Mr. Hart and Mrs. Ash.

Q. Mrs. Slominski, did you make up at the dictation of the bookkeepers for the use of Mr. Gessel statements of his monthly account from time to time?

A. Well the bookkeeper would copy it off and give it to me to type.

Q. Did you write those reports?

A. Yes.

[fol. 175] Q. How often were they prepared?

A. Well I couldn't say, but every time Mr. Gessel came into town.

Q. It was the practice in the office to copy off all of his personal account with the company that he had not previously seen and give him a copy of it?

A. The bookkeeper would give me a statement to copy and I would copy it. Of course I didn't understand it because I am not a bookkeeper.

Q. It was your understanding these statements covered Mr. Gessel's account?

Mr. de Meules: I object to that your honor.

The Master: Objection sustained.

Q. Well state to the court what these statements to which you refer what was the purpose in making them if you know.

A. Well just made them up for Mr. Gessel.

Q. So he might be at all times informed as to what items were charged to his account?

Mr. de Meules: We object to that.

A. Well I don't know about that; I am just a stenographer up there.

The Master: Objection sustained.

Mr. Martin: We except.

Q. Now then Mrs. Slominski—you were still with the company when the Western Rope & Manufacturing Company was organized were you?

A. Yes.

Q. How long did you remain with them after that time?

A. I couldn't tell you; I was there a year.

Q. During the entire time you were there you may state whether or not this practice of furnishing Mr. Gessel with copies of items that were charged to his personal account were continued.

Mr. Kates: I think this line of questioning is incompetent because she has testified she don't know anything about the correctness of the accounts that were made up.

The Master: Do you object?

Mr. Kates: Yes, sir. I object.

The Master: The objection is overruled.

A. I used to type them off right along as the bookkeeper gave them to me.

Q. Now the bookkeepers who gave you those statements were those you have mentioned awhile ago?

A. Well Mrs. Ash mostly.

[fol. 176] Q. Do you know where she is now?

A. No.

Mr. Martin: You may examine.

Cross-examination by Mr. de Meules:

Q. What year did you commence working?

A. I went there in June, 1917.

Q. Now with reference to the time you started when did the practice of your typing statements from the books commence?

A. I didn't typewrite them from the books; the bookkeeper used to give me the statement and I copied it.

Q. Then you don't know whether these statements which the bookkeeper gave you were correct transcripts of the books?

Mr. Martin: I object to that. I didn't introduce evidence for that purpose. I introduced this for the purpose of showing Mr. Gessel did actually keep in contact with the state of his account.

The Master: On direct examination she testified she didn't know whether they were correct or not.

Q. How soon after you went with the company did this practice start?

A. It was right along, I couldn't tell you how often because I don't remember.

Q. Well did you do it in June?

A. I couldn't tell.

Q. Do you know whether you did in July or August?

A. I couldn't tell you when.

Q. You don't remember when you commenced that practice?

A. No.

Q. It may have been after September and may have been September?

A. I couldn't tell you; you see it has been over four years.

Q. As far as your recollection goes at the present time that practice may not have commenced until after you had been there six months? ?

A. Well I don't remember.

Mr. de Meules: That is all.

Mr. Martin: That is all.

(Witness excused.)

W. C. CRAIG, produced, sworn and examined as a witness for and on behalf of the respondent, testified as follows:

[fol. 177] Direct examination by Mr. Martin:

Q. Now Mr. Craig, have you the corporation books of the Western Rope & Manufacturing Company in your hands?
A. No.
Q. They are not in your hands?
A. They were; they were in the trustee's hands.
Q. You are familiar with those books are you not?
A. As far as can be with an investigation, yes.
Q. And the corporation records proper, the record book of the Western Rope & Manufacturing Company has been in your hands too?
A. Yes, I believe it has.
Q. Did you have in your hands an audit covering the books of the Cordage Company made by Mendenhall?
A. Yes.
Q. Have you that now?
A. I have not, no.
Q. Do you remember what that audit showed as to the item that we have here under investigation?
A. No, I can't say without seeing it again.
Q. Is the audit accessible to you now, Mr. Craig?
A. Yes.
Q. Will you kindly get it and examine it. What is the date of that report?
A. It covers the period from the year ending December 31, 1917.
Q. Is there a report upon this particular item, covering this particular item in that audit?
A. No, sir, there is no report.
Q. There is no report upon that?
A. No.
Q. This report does it cover the assets of the Cordage Company at the time that those assets were turned over to the Western Rope & Manufacturing Company?
A. No, I rather think it was three months after the transfer. I think their report mentions—these statements cover only the year ending December 31, 1917.
Q. Do those statements show the items or the aggregate of the amount of money charged to Mr. Gessel's account in that year?
A. No, contrary to the usual practice there is no detail statement of Mr. Gessel's or the officers' accounts. There is simply a balance sheet a total shown under the head of B. M. Gessel $34,728.06.
Q. That is a balance due from B. M. Gessel to the Western Rope & Manufacturing Company?
A. Yes.
Q. Not to the Cordage Company?
A. No, they make no mention in their balance sheet of the Cordage Company.

[fol. 178] Q. Is there any report covering the amount of money withdrawn during the year 1917 from the Cordage Company by Mr. Gessel?

A. No, it simply says "the remaining current assets consist of B. M. Gessel's account which represents advances to him."

Q. Of how much?

A. That will be that $34,728.06.

Q. Does this report show whether those advances were advancements made to him after the organization of the new company or whether those advances cover the entire year 1917, whether made by the Cordage Company or the Manufacturing Company?

A. No, it doesn't make that clear in the report.

Q. Well does the report purport to cover the entire year 1917 or only the time after the organization of the Western Rope & Manufacturing Company?

A. Both.

Q. It covers the entire year, the business of the Cordage Company and the Manufacturing Company?

A. Yes, sir.

Q. Was that report among the papers of the bankrupt do you know at the time of the bankruptcy in its office?

A. Well I personally obtained it or found it in the safe when I made my investigation in July.

The Master: What year, July, 1921?

A. 1921.

Q. Do you know whether you were the first person who took possession of the books and records for the trustee after the bankruptcy?

A. No, the trustee had been since——

Mr. Martin: You gentlemen will perhaps admit to save my calling Mr. Harrison that this document was among the books and records of the company.

Mr. Kates: There was a receiver appointed by the state court for a time so that the trustee in bankruptcy got possession from the state receiver.

Mr. Martin: I said I suppose you will admit that at the time the trustee took possession this document was among the books of the bankrupt company. I want to show that this was one of the records of the company which the trustee found when he did take possession.

Mr. Kates: That is a fact.

A. I was just thinking, this particular audit was in a drawer in a desk that the income tax auditor had been using. That is where I believe I found it.

Q. Mr. Craig what was the date of the transfer from the Western Cordage Company to the Western Rope & Manufacturing Company of the assets that were transferred by it?

A. September 30, 1917.

[fol. 179] Q. Is there among the books that have been in your hands any documentary evidence of that transfer?

A. The actual books shows where the capital stock was increased and where the assets were reopened in the books on that date.

Q. Is there in the minute book of the Western Rope & Manufacturing Company any entry covering the consideration for the stock of the Western Rope & Manufacturing Company?

A. From memory I can't say positively.

Q. Have you those books accessible?

A. I haven't, no sir.

Mr. Martin: Where are they, Mr. Harrison?

Mr. Harrison: They are over here in the office.

Mr. Martin: I wish you would bring that book.

Mr. Kates: I don't see any objection to admitting that the minute book shows that.

STIPULATION RE TRANSFER OF STOCK

Mr. Martin: Let it be stipulated that the minute book shows that the assets enumerated in the audit that is in the witness' hands were turned over to the Western Rope & Manufacturing Company as consideration for its stock.

Mr. Kates: No, I wouldn't stipulate that. I say we will admit there is a minute showing the transfer of the stock of the old company for the stock of the new.

Mr. Martin: What these books do show this audit was made to determine what property it was that was being turned over in consideration for the stock of the new company and that stock was turned over to the new company and the minutes show that to be the case, and that is why I want the minutes.

(Witness temporarily excused.)

AGNES C. GESSEL, produced, sworn and examined as a witness for and on behalf of the respondent, testified as follows:

Direct examination by Mr. Martin:

Q. Mrs. Gessel you were Mrs. A. C. Leftwich in 1917?

A. Yes, sir.

Q. You held some official position in the Western Rope & Cordage Company?

A. Yes, sir.

Q. What was your position?

A. President.

Q. Mr. Ben Gessel held an official position with that company at that time?

A. Yes, sir.

[fol. 180] Q. What was his position?

A. Secretary-treasurer.

Q. You may state, Mrs. Gessel, whether or not you had at that time any of the stock of the Western Rope & Cordage Company?

A. I just had a few shares of stock.

Q. About how many did you have?

A. I think just one.

Q. Now at that time, Mr. Gessel, what was the state of the company's business as to whether or not it paid its current bills?

A. It paid them and took the discount on them.

Q. Discounted them each month?

A. Yes, sir.

Q. What was the custom between you and Mr. Gessel—all the stock that you didn't hold who held it?

A. He did.

Q. Mr. Gessel. At that time what was the custom with regard to withdrawing the money, were dividends paid out or was the money withdrawn at the pleasure of Mr. Gessel and yourself?

A. There were no dividends paid out; it was withdrawn at the pleasure of ourselves.

Q. Did Mr. Gessel leave signed checks in your hands when he was absent from the office?

A. Sometimes.

Q. And under his direction did you fill out those checks from time to time?

A. Yes, it was the understanding I was to fill them out for bills and so forth or for anything that we needed.

Q. You may state, Mrs. Gessel, whether at that time with Mr. Gessel's consent and knowledge you did at times withdraw money from the Cordage Company for your own use?

A. Yes, sir.

Q. Did be withdraw money for his own use?

A. Yes, sir.

Q. This particular check in question here do you know whether that check was filled out by you in a blank check signed by Mr. Gessel or whether Mr. Gessel filled it out himself?

A. He ordered the bookkeeper to fill it out.

Q. Who was the bookkeeper?

A. Mrs. J. F. Ash.

Q. Who filled it out?

A. She did.

Q. Who signed it?

A. He did.

Q. The entry that was made in the books of the company at the time in Mr. Gessel's account who made that entry?

A. Mrs. Ash.

Q. Do you know whether the entry was made at the date that Mr. Gessel gave this check?

A. The cash was generally posted daily, yes sir.

Q. Now Mrs. Gessel this audit that Mr. Craig has been examining were you in the office when the audit was made?

A. Yes, sir.

[fol. 181] Q. Who gave the direction that these auditors make that audit?

A. Mr. Gessel.

Q. Were you there at that time?

A. I believe he met them in Kansas City.

Q. Do you know what that audit was made for, what the purpose was?

A. To ascertain the assets and liabilities of the company in order to form this new corporation.

Q. Now then at the time in 1917 on September 18th and about that time was there any custom—I will withdraw that question. Was Mr. Gessel at times absent from the office for a considerable length of time?

A. Yes, sir.

Q. What was the custom if there was one as to informing Mr. Gessel as to what charges were made from time to time in his personal account with the company?

A. He would have his cash accounts submitted to him.

Q. About how often were those reports submitted?

A. I believe at that time they were submitted semi-monthly, every half month or the 1st and 15th.

Q. That would be every half month?

A. That is what I said.

Q. Every two weeks?

A. Yes, sir.

Q. Who made out those reports for Mr. Gessel?

A. Well they were made out sometimes by the bookkeeper, that is she copied them from the records and if she was busy she submitted them to the stenographer to copy.

Q. Do you know what was done with those reports after they were copied by the stenographer?

A. They were placed on Mr. Gessel's desk.

Q. Do you know whether Mr. Gessel had knowledge at all times in the year 1917 as to all of the transactions that went into his account with the company?

Mr. Kates: We object to that as incompetent, irrelevant testimony as to what knowledge he has.

The Master: Objection overruled.

A. Yes, he had knowledge.

Q. Did that practice of making out for Mr. Gessel reports how long did it continue?

A. Up until the time we went into—that is that we resigned or Mr. Gessel resigned from the company and turned the company into bankruptcy.

Q. That practice never was discontinued?

A. No, sir.

Q. What did Mr. Gessel do with these reports?

A. He generally passed them to the filing clerk to be filed.

Q. Were they generally filed in the office?

A. Yes, sir.

Q. Where were those reports at the time of bankruptcy?
[fol. 182] A. Well Mr. Gessel had a personal file, I presume they would be in there.

Q. You were not with the company at the time of bankruptcy were you?

A. No.

Q. How long had you been out of the office at that time?

A. I resigned on November 30, 1920.

Q. That is the time of your marriage to Mr. Gessel?

A. Yes, sir.

Q. Now during the time that the Western Rope & Cordage Company was operating, Mrs. Gessel, what were your relations with Mr. Gessel, I mean your business relations with him?

A. Well I just don't know how to state that except we were thoroughly familiar with the business and worked together.

Q. Tell the court how the Western Cordage Company's business was conducted and what you did with the profits that it made, you and Mr. Gessel.

A. You mean you want me to state just what disposition had been made?

Q. In the first place what part did you have in running the business and what part did he have?

A. At that time I was general office manager and a little bit of everything.

Q. What did Mr. Gessel do?

A. He was salesman and spent most of his time at Drumright

Q. How long did the business of the Western Rope & Cordage Company continue before the property was turned over to the new company?

A. Some time during the early part of 1915, 1919?

Q. Were you and Mr. Gessel together then in carrying forward this enterprise?

A. Yes, sir.

Q. You continued in it both of you up until the time it was turned over to the Western Rope & Manufacturing Company?

A. Yes, sir.

Q. At that time Mrs. Gessel you may state whether or not you and Mr. Gessel withdrew at your pleasure what money you needed from the account of the Cordage Company?

A. We did.

Q. Did Mr. Gessel ever give you any authority in his absence on that subject?

A. Yes.

Q. Were there ever any dividends taken out of the profits of the company?

A. No.

Q. During that period of time?

A. No.

Q. What was the situation of the business as to prosperity during that time, what did you do make money or lose it?

A. We were most prosperous at that time.

[fol. 183] Q. About how much money did the company make in the year preceding the organization of the Western Rope & Manufacturing Company?

A. In that year?

Q. Yes, that would be a part of 1917.

A. I think it was $197,000.00 or thereabouts.

Q. That was the profits?

A. Yes, sir.

Q. How were those profits used by you and Mr. Gessel?

A. Well the majority of them were invested in various enterprises.

Q. In regard to the money that you did take out for your own use about how much money did he take out and how much did you take out?

A. My withdrawals were very small compared to his.

Q. You may state to the court whether or not Mr. Gessel ever made any objection to your withdrawing any money that you pleased to withdraw from the account of the Cordage Company at any time?

A. No, he never did.

Q. What did he ever tell you about withdrawing money from the Cordage Company in his absence, what did he say about that?

A. He gave me liberty to do so.

Q. Now Mrs. Gessel do you know whether the statement that Mr. Gessel made that he had no knowledge of this $9,500.00 check until recently is true or not?

A. No, it is not true.

Q. Did he ever talk to you about that check at any time?

A. Yes.

Q. Did he talk to you about it before he issued it?

A. I told him I wanted some money and he told me just as soon as we were in funds I could have it and he gave it to me.

Q. He understood at the time that you would use that money for your own purposes and not for the company?

A. Yes, thoroughly.

Q. Did he ever talk about it afterwards?

A. Yes, we discussed it; I told him what I did with it afterwards.

Q. About how soon afterwards did you talk about it and you told him what you had done with the money?

A. I can't say just exactly; it was about the time we started the business at Milwaukee, manufacturing plant at Milwaukee.

Q. And that was after the organization of the Western Rope & Manufacturing Company was it?

A. Yes, sir.

Q. Now Mrs. Gessel when did Mr. Gessel's attentions to you, the courtship that finally resulted in your marrying him, when did that begin?

A. 1912.

Q. Were you during that entire time in the relation of being engaged to be married, sweethearts?

A. Yes, sir.

[fol. 184] Q. Did Mr. Gessel ever at any time when you requested money for your own purposes refuse to let you have it?

A. No.

Q. Up until the time that you were married to him?

A. No, sir.

Q. And for some time afterwards did he?

A. I guess not.

Q. Do you know whether or not Mrs. Gessel all of the debts that were owed by the Western Rope & Cordage Company were paid, do you know whether or not those debts were paid?

A. Yes, sir.

Q. After the company quit business?

A. Yes, sir.

Q. About when were the last of them paid?

A. Well bills that I class as open accounts were paid some time between September 30th and I would say November 15th.

Q. What other accounts did the Western Rope & Cordage Company have except the ones you classify as open accounts?

A. We had a note at the Central National Bank.

Q. When was that note paid?

A. That note was paid some time in 1918.

Q. So that at the first of January, 1919, what was the fact as to whether or not any of the debts of the Cordage Company remained unpaid?

A. When?

Q. First of January, 1919.

A. 1918.

Q. Well I said 1919, well what about it were they paid?

A. On the first day of January, 1919?

Q. Yes.

A. Yes, sir.

Q. Had they all been paid on the first day of January, 1918?

A. With the exception of that note.

Q. And that note was paid when?

A. Some time in 1918 but I can't state just when.

Q. Where in the records of the company besides in the account of Mr. Gessel did the item of this $9,500.00 check appear?

A. It appeared on the cash books and perhaps in the journal entry.

Q. It appeared on the cash book?

A. Yes, sir, and I am pretty sure there would be a journal entry.

Q. What was done in the office of the company with reference to the cancelled vouchers, how were they preserved Mrs. Gessel?

A. At that time we had a separate voucher system, that is we didn't have the check and voucher together. The checks we received at the end of the month from the bank.

Q. And where were they kept?

[fol. 185] A. They were all kept in the files.

Q. Do you know whether this particular check after it had been returned to the company remained there up until the time your connection with the company ended?

A. I presume it did, I see they have the number of the check and all. I am not sure it is there.

Q. So that besides Mr. Gessel's account it appeared at least in the cash book and according to your recollection also in the journal, the entry covering this $9,500.00 check at all times?

A. Yes, sir.

Q. And the cancelled check was itself in the office up until the time you left the office?

A. To my knowledge yes, sir.

Q. Did the check book that you used then have a stub record in it?

A. Yes.

Q. Was that record in the office, kept in the office permanently?

A. It was kept in the office permanently.

Mr. Martin: I believe that is all.

Cross-examination by Mr. de Meules:

Q. This $9,500.00 check you say Mr. Gessel handed that to you?

A. Yes, sir.

Q. Personally?

A. Yes, sir.

Q. What did he say to you when he handed it to you?

A. I don't remember his remarks.

Q. That check was made out to you personally?

A. No, sir.

Q. To whom was it made payable?

A. To the Central National Bank.

Q. He just told the cashier to make out a check for $9,500.00 payable to the Central National Bank and turned it over to you?

A. He gave the bookkeeper the instructions.

Q. And he gave it to you?

A. Yes, sir.

Q. And at that time the Central National Bank had a note due from the Western Rope & Manufacturing Company to it?

A. Yes, sir.

Q. Now whenever he gave you money then he gave you checks made payable to the bank, is that right?

A. Not in every instance.

Q. Did he ever make them to you personally?

A. I think so.

Q. How do you explain in this particular case the check was made out to the bank?

A. I told him I wanted to purchase a draft with it.

Q. Did you tell him what you wanted to do with the draft?

A. I did not.

[fol. 186] Q. Did you tell him you wanted to go out to Broken Arrow and buy a farm?

A. I didn't. The money was deposited to my credit at Broken Arrow.

Q. And she drew on your account?

A. Yes, sir.

Q. You and Mr. Gessel went out to see this farm many times?

A. We did not. I testified I told him some time in 1918.
Q. And you never went out to see the farm?
A. No.
Q. He didn't either?
A. No.
Q. Never were out to Broken Arrow together?
A. We may have been to Broken Arrow together.
Q. He had no interest in that farm?
A. No, sir.
Q. Notwithstanding the fact you told him you had taken $9,500.00 of the funds of the company and bought this farm?
A. I didn't tell him that.
Q. And you never mentioned it to him?
A. I told you I mentioned it to him some time in 1918.
Q. A year after?
A. Yes, approximately.
Q. Did he give you any other checks made payable to the bank?
A. Yes, sir.
Q. When?
A. I haven't the records before me.
Q. You don't remember?
A. No.
Q. Did he ever give you as much at $9,500.00 before that?
A. No.
Q. What was the largest check he had ever given you?
A. I can't say.
Q. You don't know whether it was a thousand dollars or five hundred?
A. It might have been five thousand.
Q. Did you ever get a check for five thousand?
A. I think I did.
Q. When?
A. I told you I couldn't say without seeing the records.
Q. You don't remember such small transactions as $5,000?
A. Not at the time we were making so much money.

Mr. de Meules: That is all.

Cross-examination by Mr. Kates:

Q. In regard to this $9,500.00 check you remember that?

Mr. Martin: If the court please it is not permitted that two counsel cross examine the same witness and the constitution provides against cruel and unusual punishment and I object to more than one counsel cross examining the witness.
The Master: Objection overruled.
Mr Martin: Exception.

[fol. 187] Q. You remember this check very distinctly, this $9,500.00 check?
A. Yes, sir.
Q. You say the bookkeeper drew that check?

A. Yes, sir.

Q. Did you notice the check particularly at the time because of its amount or because of the purpose you wanted it for?

A. No, sir.

Q. Who wrote the check?

A. Mrs. Ash.

Q. Did she write it in her own handwriting?

A. I don't recall, but I think it was on the machine.

Q. This check was used to purchase the farm at Broken Arrow by your mother?

A. I presume if it wasn't all used a portion of it was used. We had a joint account.

Q. You paid $9,500.00 for a farm about that time?

A. Yes.

Q. In whose name was the deed taken?

A. Anna B. Chamberlin.

Q. Did she keep the title?

A. With the exception of one short period when she deeded it back to me to raise the balance to pay off the Central National Bank note.

Q. How long a period was that?

A. Oh I couldn't say exactly but some time within thirty days.

Q. You immediately deeded it back to her when that transaction was closed?

A. Yes, sir.

Q. So that when the property was sold—in 1920 I believe it was?

A. I don't remember, I think so.

Q. So that at that time the deed stood in your mother's name?

A. Yes.

Q. And she owned it from the time she bought it until the time she sold it except about thirty days?

A. Yes.

Q. You remember that?

A. A very short period.

Mr. Kates: That is all.

Redirect examination by Mr. Martin:

Q. Mrs. Gessel at the time that this check was given you about what balance did the company carry in the Ceneral National Bank?

A. We used to carry from twenty-five to thirty-five thousand dollars in that bank and then we had an account in Milwaukee.

Q. What was the amount of the note that your company owed the Central National Bank to which you have referred before?

A. Fifty thousand dollars.

Q. Was that note due at the time that this check was given you? [fol. 188] A. It was a demand note but they renewed it gladly for us at any time.

Mr. Martin: I believe that is all Mrs. Gessel.

Mr. Kates: That is all.

(Witness excused.)

W. C. CRAIG, a witness on behalf of the respondent, recalled for further examination, testified as follows:

Direct examination by Mr. Martin:

Q. Did you find the entry in the book to which my inquiry was directed?

A. In the minute book of the Western Rope & Manufacturing Company under date of the 24th of September, 1917, there is a minute which says:

"Be it resolved that the directors of the Western Rope & Manufacturing Company accept the proposition submitted by the Western Rope & Cordage Company and the president and Secretary are hereby authorized, directed and instructed to purchase the property of the Western Rope & Cordage Company as set forth in their proposal and upon giving by the Western Rope & Cordage Company to the Western Rope & Manufacturing Company a bill of sale covering personal property and warranty deed covering all real estate owned by the said Western Rope & Cordage Company the president and secretary shall issue and affix the corporate seal to stock certificates issued in payment therefor to the amount of $150,000.00; issued to the following persons and in the amount set opposite their respective names:

B. M. Gessel	300 shares
A. C. Leftwich	1 share
R. J. McEwen	1 share
Josh Braden	1 share
Ewing S. Hart	1 share
William Gessel	3,500 shares
B. W. Augenstein	2,196 shares

That is the minute.

Q. Have you the bill of sale referred to in that entry Mr. Craig?

A. No, I never saw it, Mr. Martin.

Q. You haven't got that?

A. No.

Q. Is there any entry in the books of the Western Rope & Cordage Company on that subject?

A. Nothing as I see beyond setting up in the general ledger of this capital stock of $150,000 and the corresponding assets, the assets representing the capital.

[fol. 189] Q. Now the date that this entry is made is December 24th?

A. No, September 24th.

Q. 1917?

A. Yes, that is the date of the meeting.

Q. Is there anything in any of the books, Mr. Craig, from which you were enabled to identify the personal property that was included in that transaction?

A. The best way to explain that is in the case of the personal assets,

such as accounts receivable, bank balances, inventories of goods on hand and assets of that nature there was simply a continuation.

Q. That is not the question I asked you. This entry that you find in the books said that the title would go to the new company upon the execution of a bill of sale covering the property that is intended to be passed to the new company. Now you didn't find anything meeting that requirement did you?

A. Not beyond the caption on some of the books that were being used were changed to "Manufacturing."

Q. Some of the books that had been purchased originally for the Cordage Company were changed to meet the use of the "Manufacturing" company?

A. I think that was done.

Q. But you never did find where the Cordage Company actually did transfer the property that was contemplated by this entry to the Western Rope & Manufacturing Company?

A. No.

Q. You did find the real estate conveyances did you not?

A. I think my report shows that the real estate was never even transferred to the original company.

Q. So far as you are able to tell there never was any actual transfer made by the Cordage Company any further than is evidenced by this entry in the books?

A. And the alteration on the checks and vouchers for the checks.

Q. Whether or not the Cordage Company ever did transfer to the Western Rope & Manufacturing Company the balance of $34,000 shown by the Mendenhall audit to be due one or both of those companies from Mr. Gessel you found no evidence?

A. That $34,000 was not the amount on the date on which this transfer took place. It was the amount three months after the transfer had apparently taken place.

Q. Did you ascertain what amount of indebtedness was due from Mr. Gessel to the Western Rope & Manufacturing Company according to those books at the time of the organization of the new company?

A. On September 30, 1917, the books show B. M. Gessel was in-[fol. 190] debted to the Cordage Company for $27,647.74, but this item was written off.

Q. That was written off the books of the Cordage Company before the organization of the Western Rope & Manufacturing Company?

A. Yes, it was written off September 30th.

Q. And that item included this $9,500.00 charge?

A. Yes.

Mr. Martin: That is all.

Cross-examination by Mr. Kates:

Q. Mr. Craig, you have examined both the books of the Western Cordage and Western Rope have you not?

A. Yes.

Q. Can you state whether it is a fact that the Western Rope simply took over and continued the business of the Cordage Company?

Mr. Martin: Now I object to that as calling for a conclusion of the witness, not proper evidence. The witness can tell the facts and then the court can make the conclusion.

The Master: The question is whether or not he can testify to that. I will overrule the objection.

Mr. Martin: We except.

(Question read.)

A. Yes.

Q. Now is it a fact that the Western Rope & Manufacturing Company continued the business of the Western Rope & Cordage Company?

Mr. Martin: I object to that as incompetent, irrelevant, immaterial and calling for a conclusion of the witness upon matters that the witness' testimony shows he has no knowledge except from entries found in the books.

The Master: Objection sustained.

Q. Now Mr. Craig, you may state whether or not the same creditors, that is to say the same persons, whom the Western Cordage Company bought their supplies sold supplies to the Western Rope & Manufacturing Company?

A. Yes.

Mr. Martin: I intended to object to that. The question whether the same people dealt with them would not be material in this investigation.

A. It is true the $27,000.00 was charged off to suspense account; this suspense account was then written off on December 31st as uncollectible.

Q. At what time?

A. 1917.

[fol. 191] Redirect examination by Mr. Martin:

Q. As uncollectible?

A. As uncollectible, as though it were a bad debt, in fact I believe the income return showed it that way. But on January 19, 1918, Mr. Gessel paid into the business an item of $21,950.60, which was just a few days after this account had been written off as a bad debt.

Q. All of that was before the organization of the Western Rope?

A. This last was after the organization of the Manufacturing Company.

Q. The time Mr. Gessel put that money in?

A. Yes, sir, after the reorganization.

Q. There is one question I omitted to ask. No charge was ever made against Mr. Gessel on the books of the new company of any

balance that he owed the Western Cordage Company was there Mr. Craig?

A. Not in his own name, but this suspense account that I mentioned contained that item as having been transferred from Mr. Gessel's account.

Q. The item of $27,000.00, yes the suspense account of the Cordage Company.

A. The Cordage Company was never liquidated, that is just like a state of continuance; there were no balances brought down, but simply a transfer from one page to another.

Q. But never anywhere in the books of the Western Rope & Manufacturing Company was the balance that Mr. Gessel owed according to the books of the Cordage Company carried on the books of the new company against him at all?

A. I am not positive of that but if so it was only in suspense.

Recross-examination by Mr. Kates:

Q. Mr. Craig, this suspense account, was that carried over into the Western Rope & Manufacturing Company?

A. I have here a balance sheet of October 1, 1917, that would be the one for September 30, 1917, but I believe the date in the books was October 1st; in that there is shown as an account receivable B. M. Gessel $27,647.74.

Redirect examination by Mr. Martin:

Q. That is the same account that was charged off, that never was carried in the books of the Western Rope & Manufacturing Company?

A. Yes, on October 1st it was on the books, it was not charged off. [fol. 192] Q. Until what time?

A. December, in the period between September and December.

Q. What is the date that the suspense account was charged off?

A. I believe the date in the book is September 30, 1917.

Q. What is the entry, Mr. Craig, read it to the court?

A. I believe this is the wording, I am not positive that it is exactly, "Balance in account written off to suspense account as being uncollectible." Then suspense account written off.

Q. You don't know whether that is an accurate copy of the entry on the books?

A. No, that is what happened.

Q. Will you kindly compare that with the actual entry on the book and let us have the entry that was made on the book from which you have made that entry in the audit?

A. I haven't the books here.

Q. But that was the substance of it?

A. Yes, sir.

Recross-examination by Mr. Kates:

Q. Mr. Craig, were the books of the Western Rope & Manufacturing Company ever closed?

A. Of the Manufacturing Company?
Q. No, of the Cordage Company?
A. No, they were not.
Q. And items were carried on from the books of the Western Cordage Company to the new company from time to time?
A. No, all at one time.

Redirect examination by Mr. Martin:

Q. All of the items that were carried over were entered on the 30th day of September were they?
A. Either the 30th day of September or October 1st.
Q. One or the other of those dates?
A. Yes.
Q. The same time that this charge was written off was when those items that were carried on the books of the Western Rope & Manufacturing Company were entered in the books?
A. I don't quite see what you mean.
Q. You answered Mr. Kates that some of the items appearing in the books of the Cordage Company were carried over in the books of the Western Rope & Manufacturing Company?
A. Yes.
Q. Those items such as were carried over were entered all at one time either the 30th of September or 1st of October?
A. I would say so, yes.
[fol. 193] Q. At the same time that this entry was made writing off the balance that was due from Mr. Gessel to the Cordage Company?
A. Well from my report here apparently yes.

Recross-examination by Mr. Kates:

Q. Now Mr. Craig, you have been questioned in regard to an audit of Wright, Mendenhall & Wright. I will hand this report to the reporter and ask him to identify it as Trustee's Exhibit #1. This is the report from which you have testified?
A. Yes.

Mr. Kates: I ask to have that go in evidence.
The Master: Any objection?
Mr. Martin: No, I thought it had already been identified or I would have identified it. That is all if the court please.

(Witness excused.)

Mr. Kates: That is all we have. No rebuttal.

At Tulsa, in said district, on this the 1st day of April, 1922, before Honorable A. F. McGarr, Special Master, hearing upon order authorizing Special Master to take testimony in reference to Jenks Road property

[Title omitted]

Appearances: George Harrison, Trustee, in person and by his counsel Phillip Kates, Esq., P. C. West, Esq., H. B. Martin, Esq., for respondents.

ARGUMENT OF COUNSEL

Mr. Kates: Now if the court please I desire to file as Trustee's Exhibit #1 a certified copy of the separate answer and cross petition of Anna B. Chamberlin and E. F. Chamberlin, filed in the District Court of Tulsa County on September 20, 1921. I suppose you have no objection to that.

Mr. Martin: No, I have no objection to that.

Mr. Kates: As Trustee's Exhibit #2 I desire to file the supplemental amendment to answer and cross-petition filed March 9, 1922.

As Trustee's Exhibit #3 I desire to file an order correcting the record, said order being dated March 23, 1922.

As Trustee's Exhibit #4 I desire to file a certified copy of the [fol. 194] rules of the District Court of Tulsa County as revised on February 17, 1922.

Mr. Martin: I object to that as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Martin: Exception.

Mr. Kates: I also want to file a certified copy of the rules of the District Court in effect prior to February 17th, 1922, but I haven't it here just now.

PHILLIP KATES, produced, sworn and examined as a witness for and on behalf of the trustee, testified as follows:

Examination by Mr. West:

Q. State your name.
A. Phillip Kates.
Q. Where do you live?
A. I live in Tulsa.
Q. What business are you in Mr. Kates?
A. I am an attorney.
Q. Did you bring any suit in the state court with regard to certain property situated in Tulsa County claim to be a part of the estate of the bankrupt the Western Rope & Manufacturing Company and commonly referred to as the property situated on the Jenks Road?
A. I did.
Q. When was that suit started by you?
A. Started on August 26, 1921.
Q. In what capacity were you acting in bringing that suit?

A. As attorney for the trustee in bankruptcy in this matter.

Q. Mr. Harrison?

A. George Harrison, Trustee of the Estate of the Western Rope.

Q. Will you state to the court what course that matter took with regard to the pleadings and actions?

A. I would like to start in the beginning and explain fully to the court what happened.

Mr. Martin: If the court please if it is attempted to prove by Mr. Kates the state of the records in the State Court I object to that as incompetent, not the best evidence.

Mr. West: There are a great many of these matters that are not shown by the record; of course the records will be shown in the course of this proceeding.

The Master: The objection will be overruled.

Mr. Martin: Exception.

[fol. 195] A. I will say that late on the afternoon of Friday the 26th of August, 1921, the trustee in bankruptcy came to my office and informed me that he had learned——

Mr. Martin: I object to that as hearsay and incompetent. Communication between Mr. Kates and his client.

The Master: That will be overruled.

Mr. Martin: Exception.

A. That property owned by Mrs. Chamberlin on the Jenks Road was about to be sold on Saturday morning and that the Chamberlins were leaving for California. An investigation had been made into the affairs of the Western Rope & Manufacturing Company prior to August 26th which indicated that the——

Mr. Martin: I object to that as incompetent. Mr. Kates can't testify to the knowledge of other people on the facts.

A. Had been made by me.

The Master: That was your testimony as I understood.

Mr. Martin: No, he said the investigation had been made.

A. By me.

The Master: All right.

A. Which indicated that the Trustee in Bankruptcy might have a claim for that property. In view of the situation the suit was filed late on Friday afternoon and the summons was served at that time. Subsequently in the bankruptcy proceedings at the hearing after Anna B. Chamberlin and Mrs. Gessel and Mr. Gessel had been made parties to the bankruptcy proceeding the attorney for the trustee was of the opinion that the matter was subject to summary action by the bankruptcy court because of fraud apparent on the face of the proceeding and the claim of Anna B. Chamberlin was only a colorable claim. No leave had been secured from the bankruptcy court to file the suit and upon the matter appearing in the bankruptcy suit that

suit was dismissed. Prior to the dismissal of the suit, which was in January, 1922, Anna B. Chamberlin had filed what was said to be a cross-petition setting up that the trustee was harassing her by bringing this particular suit. On February 6, 1922, a motion to strike, which the trustee had filed in that case before the dismissal was set for hearing in the District Court of Tulsa County in Division No. 3. The trustee's attorney attended court on the morning of Monday——

[fol. 196] Mr. Martin: If the court please this is absolutely incompetent. Undoubtedly this court will not undertake to review the decision of the state court, its proceedings. This whole matter has been passed upon by the state court.

A. That is not so, if the court please.

Mr. Martin: Mr. Kates, I am not going to permit you to indulge in that kind of conduct in the trial of this case.

A. Now Bart, the record is here.

Mr. Martin: That is absolutely true and Mr. Kates is fully aware of it that this case was argued, this same proposition; Mr. Kates spent half a day in arguing to the court that the court acted wrong in connection with his rulings and the court has held against him.

Mr. West: Will counsel permit a suggestion?

Mr. Martin: Yes, sir.

Mr. West: The purpose of this matter as I understand it is to show what the contention of the counsel for the trustee in bankruptcy was and how he attended to this matter and what he actually did.

Mr. Martin: I have no objection to that at all. But the testimony now appears to be going to a complaint against the propriety of the action of the state court. Of course the question of jurisdiction of these courts is open to the decision of both of them, but neither one as I understand will undertake to decide whether the other is acting right or wrong.

Mr. West: We think it is essential for this court to know exactly what the trustee's attorney did in the course of that proceeding.

Mr. Martin: As to that I have no objection.

The Master: There will be no attempt to review the decision of the state court.

A. Trustee's counsel attended the District Court of Tulsa County on the 6th of February, 1922. The rules of the District Court at that time provided that Monday between the hours of nine and twelve in the forenoon should be motion day, and that matters not disposed of at that time would go over until the next motion day. The matter of this motion was not disposed of during the morning session. It was passed. On the 13th of February trustee's counsel learned that on February 11th Anna B. Chamberlin through her counsel had secured a default judgment in the District Court of Tulsa County before another judge than the judge who had passed on the motion. [fol. 197] Counsel afterwards learned that the motion had been called up in the afternoon after one-thirty and had been stricken for

failure to prosecute although no notice had been given to trustee's counsel of the calling of the motion after the noon hour.

Q. That was on the 11th?

A. No, on the 6th.

Q. And you didn't know of that until when?

A. The thirteenth.

Q. And then you discovered what?

A. That on the 11th a default judgment had been taken before the Honorable Albert C. Hunt. So on Monday the 13th as soon as I learned the fact I immediately went to see Judge Hunt and asked him how this default had been rendered. He said that counsel for Anna B. Chamberlin——

Mr. Martin: I object to it.

Mr. West: I think that would be incompetent.

A. The judge immediately set the judgment aside and expunged the record of the judgment. On Thursday the 16th this matter of the summary application to take the property on the Jenks Road had been set for February 1st, and at the request of counsel for Anna B. Chamberlin had been continued to the 15th, as counsel was to be in the Supreme Court on the 15th. On the 15th of February Mr. Reynolds of Mr. Martin's office called me up in the afternoon and asked if I would agree that the matter go over until Friday the 17th. I said I would prefer to argue it on the 15th even if I had to come back after supper, but he said it would be late. On Thursday the 16th of February I was in the court of Judge Hunt, the District Court of Tulsa County, to present a petition to dissolve a corporation, when I learned that in the court of Valgean Biddison, Division No. 3, Anna B. Chamberlin was taking a default against me in this said case. That was on Thursday and the rules of the District Court provide that defaults shall be taken only on Saturday. I objected to the default on the ground that I wasn't in default and various other grounds. Counsel then requested that I be enjoined from presenting the matter in any other court, calling to the attention of the court that I was proceeding in a summary matter in the bankruptcy court, and the court announced then that I would be enjoined from presenting this matter and the court attempted to enjoin me from presenting the matter on the 17th the day it had been set, and I respected the order of the District Court of Tulsa County; and thereafter filed a demurrer in the District Court of Tulsa County in which I called attention to the want of jurisdiction in the court to proceed. After the conclusion of the argument counsel for Anna B. Chamberlin asked leave to amend.

[fol. 198] Mr. Martin: Not on jurisdictional grounds however.

A. Asked leave to amend their petition, and the District Court of Tulsa County refused to pass upon the demurrer saying that he would treat the cross-petition as amended. The court announced at that time that inasmuch as the cross-petition as filed originally only asked that I be enjoined from setting up any claims in that suit, the facts alleged only justified that; that inasmuch as I had dismissed my

petition the relief sought under the cross-petition was a moot question; the amended petition filed on the 9th of March, the amended cross-petition, alleged that since the bringing of the suit in the District Court I was bringing other suits and harassing the defendant without suits. Then a motion was made to dissolve the injunction in the District Court alleging that the injunction was void because no bond had been given. The restraining order and injunction was conditioned upon Anna B. Chamberlin giving a bond and the bond was not given in the time required by the court; and since that time I understand an entirely new cross-petition has been filed by Anna B. Chamberlin asking that I be enjoined from prosecuting this summary proceeding in bankruptcy. That is all.

Cross-examination by Mr. West (?) Martin:

Q. Mr. Kates you brought the suit in the State Court, as I believe you have stated here before, not with any intention of prosecuting it but only for the purpose of preventing the transfer of the property?

A. No, I have not said that.

Q. Until you could bring the suit or other suits elsewhere?

A. I haven't stated that.

Q. You didn't state that to Judge McClarr here?

A. No, sir.

Q. On previous occasions?

A. No, sir.

Q. You haven't stated it at all to anybody?

A. Not that I know of. I will tell you what my intention was.

Q. I want to know what you said about it.

A. I never made any such statement as that because it isn't a fact.

Q. You did not intend to prosecute the action when you brought it in that court, did you Mr. Kates?

A. I can only answer that by explaining the purpose I had in mind at the time I brought the suit.

Q. Well I will help you to do that maybe. You brought the suit merely for the purpose of clouding the record temporarily so that the transfer could not be made?

A. No.

[fol. 199] Q. With the intention of afterwards dismissing the suit and bringing a different suit?

A. No.

Q. Well what did you bring it for?

A. I brought it for this reason: That Agnes Gessel had told the Referee in Bankruptcy she would not obey the subpoena to be here on the 14th of September that they would be in California. I heard that the entire money was to be paid and they were to be out of the state. I didnt have time to consult anybody. I knew if suit was brought we would be fighting over a dead horse. I filed that suit with the intention of prosecuting it to a final conclusion if it was necessary. I will say that I didn't know at that time, was not sure, whether the United States Court had jurisdiction or whether the state court had jurisdiction, and at that time inasmuch as there had been

no hearings in the bankruptcy case I did not know that under the facts it would be subject to summary proceedings. I intended to prosecute that case if necessary.

Q. You did bring another plenary suit immediately afterwards in the United States District Court?

A. Yes.

Q. Which you dismissed?

A. Yes, which I dismissed.

Q. Then you brought besides these two plenary suits you brought this summary proceeding to take away summarily the possession of this property?

A. As soon as it appeared on the record of the bankruptcy court that the matter was fraudulent I invoked the jurisdiction of this bankruptcy court.

Q. And you have from time to time taken the trouble to announce to Mrs. Chamberlin's purchaser of this property that you were intending to bring other suits?

A. No, sir. On the day after I filed this suit on Saturday morning I found out who the purchaser was. I told him I had brought this suit. I says, it may be you won't hear of it until later in the day but I am informing you now. I afterwards attempted to bring him into this court but he objected to the jurisdiction of the court and then I filed a summary proceeding against Anna B. Chamberlin. Subsequently Mr. Creekmore came to my office and told me that you had told him this matter was so ridiculous that I was clouding the record and seemed to think I was personally going against him. I told him no I had nothing against him. I told him I didn't know I was going to recover the land but I was certainly going to try to until the afternoon of the last day.

Q. How many conversations have you had with Mr. Creekmore bearing on his purchase of this property?

A. I think the morning when I called him on the telephone the day I brought the suit.

Q. How many conversations have you had with his broker and [fol. 200] agent Mr. Terwilleger and how many with Mr. Grimes his attorney?

A. I don't know. The last conversation I had with Mr. Grimes he brought it up himself. I will say since I have filed this summary action I haven't bothered to talk to anybody about the case unless they brought it up themselves.

Mr. Martin: I believe that is all.

(Witness excused.)

Mr. Kates: I have everything in the record except the rules of the District Court of Tulsa County before amendment. I believe that is all. I believe I have introduced at the various hearings since this summary matter was filed but I introduce against to prevent any mistake the record in the bankruptcy case, particularly the testimony of Anna B. Chamberlin and Agnes Gessel, B. M. Gessel and other witnesses at the hearings had at the hearing beginning September 14,

1921, and continuing thereafter; and I request the court to make an examination of the record as offered and the record in the bankruptcy case.

Mr. Martin: I believe that evidence is incompetent upon this application because it was not taken upon this application or upon any notice that it would be used and has not the character of either parol testimony upon the issues made in the case or of depositions and would be for that reason incompetent.

The Master: I believe that was passed on before.

Mr. Martin: Well I don't remember the ruling.

The Master: The evidence would be admitted.

Mr. Martin: Let us except.

Mr. Kates: I will have to ask leave to supply the rules of the District Court prior to February 17, 1922.

The Master: Is there any dispute as to what the rules were?

Mr. Martin: No, I don't think they have any place in the evidence.

Mr. Kates: I have set out in my reply what Rule #5 was.

Mr. Martin: Is that a reply?

Mr. Kates: No, this is just a small memorandum on one point of this case.

Mr. Martin: I didn't know that a reply had been filed.

[fol. 201] Mr. Kates: The trustee, if the court please, is through.

Mr. Martin: If the court please, I move upon the evidence to dismiss the petition upon the several grounds. 1st that the petition upon its face does not show any facts sufficient to confer jurisdiction upon this honorable court. 2nd. That the petition upon its face shows no facts sufficient to constitute a cause of action either summarily or otherwise. 3rd. That the proof offered is not sufficient to show either jurisdiction in the court or any cause of action in favor of the petitioner.

The Master: I will overrule the motion as to the sufficiency of the petition.

Mr. Martin: And you will hear me upon the sufficiency of the proof.

The Master: I believe, gentlemen, at this time the only question I am in doubt about is whether you could amend your cross-petition in the state court without authority, whether or not you could sue the trustee without authority of the bankruptcy court.

Mr. Martin: The respondent has no further testimony to offer.

TRUSTEE'S EXHIBIT #1, 4-1-22—EXHIBIT NO. 2

IN THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA

No. 15910

GEORGE HARRISON, Trustee in Bankruptcy of the Western Rope & Manufacturing Company, Bankrupt, Plaintiff,

vs.

A. C. GESSEL, ANNA B. CHAMBERLIN, E. F. CHAMBERLIN, and B. M. GESSEL

Separate Answer of the Defendants Anna B. Chamberlin and E. F. Chamberlin—Filed September 20, 1921

Come now the defendants, and for answer to the petition of the plaintiff filed in the above entitled cause allege and state:

I

That they deny each and every material allegation in said petition contained.

II

And for further defense state that they are the owners and in possession of said land described in said petition, to-wit: The South 330 feet of the North 660 feet of the West 660 feet of Lot three, [fol. 202] Section 18, Township 19, Range 13 East, beginning at a point 660 feet North of the Southwest corner of Lot 3, section 18-19-13, thence East 660 feet, thence North 330 feet, thence West 660 feet, thence South 330 feet to point of beginning, and each and every part thereof, together with all improvements thereon.

III

That said property was purchased by the defendants from one O. K. Eysenbach on or about March 6, 1919 with the funds of the defendants.

IV

Defendants state that no part of the money used by the defendants in purchasing said property, and in erecting the improvements thereon came from the Western Rope & Manufacturing Company, a corporation, either directly or indirectly.

Wherefore, defendants having fully answered pray that the plaintiff take nothing by reason of said petition, and that they have judgment for their costs herein expended.

Cross-petition

For further answer and cross-petition to the petition of the plaintiff filed herein the defendants, Anna B. Chamberlain and E. F. Chamberlain incorporate herein all the allegations of their separate answer hereinbefore set out, and make said separate answer a part hereof, and in addition thereto allege and state:

I

That the plaintiff, George Harrison, Trustee of the Western Rope & Manufacturing Company, a corporation, filed the above entitled action for the purpose of vexing and annoying the defendants, and clouding the title of the defendants in and to said property, and each and every part thereof. That said action is not prosecuted by said plaintiff in good faith.

II

That at the time said action was filed the defendants had negotiated an advantageous sale of said property, and that said plaintiff in wrongfully and maliciously setting up said pretended claim to said property, and wrongfully and maliciously filing said action on said pretended claim has prevented the defendants from consummating the sale of said property to their great loss and damage.

[fol. 203] III

Defendants further state that they are now, and have been at all times herein mentioned in the possession of said property, and each and every part thereof.

Wherefore, defendants pray that their title in and to said land, and each and every part thereof, be by judgment and decree of this Honorable Court quieted as to the plaintiff, George Harrison, Trustee, and all persons claiming by, through or under him, and that said plaintiff, George Harrison, Trustee, and all persons acting by, through or under him be perpetually enjoined from asserting any right, title, claim or interest in and to said property, or any part thereof, for costs of this action, and such other and further relief as the court may deem just and proper.

(Signed) H. B. Martin, Attorney for Defendant.

I, Frances Harvey, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in the District Court of Tulsa County, Oklahoma, this 31 day of March, 1922.

Frances Harvey, Court Clerk, by Frank Ross, Deputy.

(Seal.)

TRUSTEE'S EXHIBIT #2, 4-1-22—EXHIBIT NO. 5

IN THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA

No. 15910

GEORGE HARRISON, Trustee in Bankruptcy of the Western Rope & Manufacturing Company, Bankrupt, Plaintiff,

vs.

A. C. GESSEL et al., Defendants

Amendment and Supplement to Original Answer and Cross-petition Filed March 9, 1922

Comes now the defendant, Anna B. Chamberlin, by leave of court, and files this her supplement to her original answer and cross petition in the above entitled cause.

And for further answer and cause of action against the said plaintiff alleges and states:

I

That at the commencement of this action said plaintiff, George Harrison, was the duly appointed, acting and qualified Trustee in Bankruptcy appointed by the United States District Court for the Eastern District of Oklahoma, in the matter of the bankruptcy of the Western Rope & Manufacturing Company, then pending in said court.

II

[fol. 204] That said trustee since the filing of the original answer and cross-petition in this cause dismissed his petition in this cause without prejudice.

III

That said trustee is now, and has been at all times since the commencement of this action wrongfully and falsely asserting a claim to the title to the property described in said petition, and said original answer and cross-petition in this cause, and has prevented and is preventing such false, malicious, wrongful and unlawful claims the sale of said property by the defendant, Anna B. Chamberlin pursuant to a contract for the sale of said property made with one C. B. Creekmore prior to the commencement of said action.

IV

That said trustee through himself, his agents, employees and counsel is now, and has been at all times since the filing of the original answer and cross-petition in this cause wrongfully, maliciously and unlawfully asserting ownership over, and title to, said property by claiming the same as property of said bankrupt,

Western Rope & Manufacturing Company, a corporation. Said pretended ownership and claim of title being made to the said C. B. Creekmore, Guarantee Trust & Title Co., C. H. Terwilleger, and various and sundry other persons whose names are to this answering defendant unknown for the wrongful and unlawful purpose of preventing this answering defendant from selling or disposing of said property, or any part thereof.

V

That all of the foregoing acts, claims and assertions of said plaintiff, George Harrison, Trustee, of the Western Rope & Manufacturing Company, a corporation, as aforesaid, have been and are made for the purpose of vexing and annoying this answering defendant. That all of said acts, claims and assertions have at all times herein mentioned, and do now constitute a cloud upon the title of this answering defendant, rendering her title to said property unmarketable and preventing her from consummating a sale of said property negotiated before the filing of this action.

Wherefore, this answering defendant asks judgment as prayed for in the original answer and cross-petition heretofore filed by her in said cause.

(Signed) H. B. Martin, Attorney for Defendant Anna B. Chamberlin.

[fol. 205] Filed March 9th, 1922, in the District Court of Tulsa County, Oklahoma.

I, Frances Harvey, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in the District Court of Tulsa County, Oklahoma, this 31st day of March, 1922.

Frances Harvey, Court Clerk, by Frank Ross, Deputy.

TRUSTEE'S EXHIBIT #3, 4-1-22—EXHIBIT No. 8

STATE OF OKLAHOMA,
Tulsa County:

IN THE DISTRICT COURT

No. 15910

GEORGE HARRISON, Trustee, etc., Plaintiff,

vs.

AGNES C. GESSEL et al., Defendants

Now on this 23d day of March, 1922, it being called to the attention of the court that in the minutes of March 9, 1922, of this court,

Division No. 3, Honorable Valjean Biddison presiding, the following minute was made as to the action of this court in this cause:

"The court holds 'Trustee' can be sued in this court without permission of bankruptcy court. Defendant and cross-petitioner given leave to amend cross-petition instanter. Plaintiff given five days in which to plead to the amended pleadings."

And the same order appears in the appearance docket of the clerk's office on said date in said cause.

And it appearing to the court that said minute is incorrect in that no action was taken by the said court on said date except to permit the defendants to amend their cross-petition and giving the plaintiff time to plead; said defendants asking permission to amend on the court's announcing that he would sustain the demurrer on the ground that the cross-petition did not state a cause of action, on said demurrer; but as the cross-petition was amended instanter by leave of court, no ruling was made on the demurrer.

It is therefore ordered, that the above minute be corrected as above set forth on the clerk's minutes and on the journal and on the appearance docket.

(Signed) Valjean Biddison, Judge.

I, Frances Harvey, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in the District Court of Tulsa County, Oklahoma, this 31 day of March, 1922.

Frances Harvey, Court Clerk, by Herbert A. Smith, Deputy.

(Seal.)

[fol. 206] TRUSTEE'S EXHIBIT #4, 4-1-22

This is to certify that the following is the true, correct and effective rules of the court in effect this date.

Frances Harvey, Court Clerk, by Frank W. Ross, Deputy.

Rules of the District Court

(Revised February 17, 1922)

Rule I

During the period that each judge shall act as assignment judge, he will hear all default divorce cases.

Rule II

All causes pending or filed in said Court, except as herein otherwise provided, shall be tried in their numerical order except when advanced by joint order of the majority of the conference of Judges

as hereinafter provided, upon good cause shown. Request to advance a cause for trial on its merits shall be made in writing and a copy of such request with proof of service of notice that same will be presented to the conference shall be served on opposing counsel three days prior to the presentation thereof to the conference.

Rule III

On the first and third Mondays of each month of the year a conference of the Judges of the Court shall be held, at which three Judges shall constitute a quorum, and at which conference a majority of the judges present shall rule.

Rule IV

All requests for hearings and considerations of proceedings not called upon regular assignments, including motions and demurrers not acted upon under the rule relating thereto, applications for restraining orders, injunctions, receiverships, mandamus, quo warranto, habeas corpus and defaults, and arraignments, fixing of bail, bond forfeitures, extensions of time to plead, etc., shall be on a simple written form which the Court Clerk will design and furnish, upon which shall be endorsed the order of the Judge acting as assignment judge, either formally disposing of the request or assigning same to some other division of the Court for disposition; and all maters and proceedings not on such regular assignments shall be so considered as to interfere as little as possible with the work of the various divisions of the Court upon such regular assignments.

Rule V

On Monday of each week, beginning at 9 o'clock a. m. and extending for such period of time through said day or successive days as [fol. 207] may be necessary for the purposes herein designated, the Court will hear and pass upon motions and demurrers filed prior to Monday of the preceding week, without notice to counsel.

Motions or Demurrers that are presentable under this rule, and that are not presented, may be dismissed or stricken for failure to prosecute the same, unless by agreement of counsel with consent of the Court they are continued to a subsequent motion day, or other Court day designated in the agreement.

Motions and Demurrers presentable under this rule upon any given Monday, and not then heard, are subject to call and hearing on the succeeding motion day as herein designated, unless by agreement of the parties the same are continued to a motion day certain.

Any motions or demurrers pending at the time of the adoption of these rules may be heard upon any subsequent rule day upon three days' notice by either party if on the said rule day there is time for hearing the same after disposing of the motions and demurrers hearable under this rule, or said motions or demurrers may be heard without notice at special settings for that purpose.

The Court will not be bound by a stipulation of counsel for the continuance of a motion or demurrer past three motion days.

Any motion or demurrer may be considered by the Court upon any Court day agreeable to both parties and acceptable to the Court.

Rule VI

All stipulations with reference to matters pending in Court must be in writing to be binding upon the parties, and are then subject to the discretion of the Court in the administration of the business of the Court.

Orders taken by counsel upon oral stipulations will be at the peril of the party taking them of having them set aside, should any contest arise over the terms or existence of the oral agreement or stipulation.

Rule VII

No files in any pending case shall be taken from the Court Clerk's office within a day preceding the time when the case is set for trial upon any setting of the docket, nor thereafter within one day of the time in which it may be reached for trial, except upon a special order of the Court or Judge.

The Clerk will keep a book or file containing the receipts of coun-[fol. 208] sel for papers showing the time when the files were taken, what files were taken, and when they are returned, and it shall be incumbent upon counsel returning files to see that the date of the return is entered upon said book according to the fact.

No files shall at other times be taken from the Clerk's office except upon a written receipt of the attorney withdrawing the same, and not at all, except by members of the bar of the county or upon their receipt, and no files shall be detained by any counsel taking them from the Clerk's office for a longer period than three days, unless upon a special order of the Court or Judge thereof. Upon any violation of this rule, by any attorney, the Clerk of the Court will refuse to permit such attorney to take any other files from the Clerk's office except upon a special order of the Court or Judge.

Rule VIII

Except in cases of emergency, motions for the appointment of receivers, to vacate attachments or garnishments, for the granting of a temporary injunction, and other motions requiring notice, shall be assigned for hearing on the rule day succeeding the date of filing, or upon any other Court day acceptable to the Court.

Rule IX

Motions and demurrers filed but not presented by the counsel for such moving party, will be stricken for failure to present, and such party given five days thereafter to further plead or answer, unless the Judge before whom the pleading is assigned for consideration

shall deem the same frivolous, in which event it shall be stricken for that reason without time to the pleader to plead further.

Rule X

No jury trials will be commenced on Saturday, and no Court will be held on that day except for the completion of trials of causes commenced and not completed on the previous day, and for the consideration of matters which the Judge acting as assignment judge may determine are especially urgent.

Rule XI

Defaults in civil cases, except divorce cases, will be taken only on Saturday.

Rule XII

Each judge, calling a regular assigned docket, shall when completing that day's first call, immediately proceed to sound the succeeding day's docket for the purpose of enabling the Court [fol. 209] to be advised of the condition of the business to be transacted on such succeeding day, and for the convenience of counsel in preparing for the trial of such causes.

Rule XIII

Total relief from jury service may be granted only by the acting assignment judge.

Rule XIV

Attorneys and others will arrange with the Judge's Reporter for all interviews with a member of the Court.

Rule XV

No divorce case will be tried or considered on its merits until the petition therefor has been on file in the office of the Court Clerk of the County for a period of thirty days and in cases hereafter filed, no decrees of divorce will be granted until the defendant shall have been either actually or constructively served with process fixing the time within which he shall answer the petition; provided, however, that the Judge who tries such cause may, in the decree, recite reasons why a waiver of summons or answer, for good cause shown, entitles the plaintiff to be relieved from the operation of this rule, in which event the said waiver shall be acknowledged before a person duly authorized to administer oaths.

Rule XVI

Each Judge of this Court shall, upon adjournment of his division of the Court, cause to be filed with the acting assignment judge a brief statement of the disposition of matters assigned to his division for that day, including any action taken in causes not on such assignment.

Rule XVII

Attorneys will be required to present formal orders in causes not coming on regularly for hearing, at times when the Court is not engaged in hearing of other causes.

When the Court is in session, all matters will be discussed with the Court in an orderly manner. No member of the Bar will have the ear of the Court in private while Court is in session, unless at the instance of the Court himself, and then both sides will participate in the discussion, but only at the instance of the Court.

Rule XVIII

Argument on motions will be heard only when the attorneys presenting same are standing, unless the Court for good cause permits [fol. 210] counsel to argue seated, and every member of the Bar shall have the floor while presenting motions and demurrers to the exclusion of all other attorneys and all other persons. Reasonable opportunity will always be given to counsel on the other side to answer arguments made, but no interference will be brooked during argument except objections properly made to the Court.

Rule XIX

Verdicts in civil cases returned by juries will be read in open court by the Clerk of the Court, and the jury will indicate whether the same is the verdict of such jury, and thereafter, counsel will save any exceptions desired to the verdict. Judgments will be rendered on the verdicts of the jury at once.

(Signed) W. B. Williams, Redmond S. Cole, Valjean Biddison, Albert C. Hunt, District Judges. (Seal.)

Trustee's Exhibit #5, 4-1-22

Rules of the District Court

Rule I

During the period that each judge shall act as assignment judge, he will hear all default divorce cases.

Rule II

All causes pending or filed in said Court, except as herein otherwise provided, shall be tried in their numerical order except when advanced by joint order of the majority of the conference of Judges as hereinafter provided, upon good cause shown. Request to advance a cause for trial on its merits shall be made in writing and a copy of such request with proof of service of notice that same will be presented to the conference shall be served on opposing counsel three days prior to the presentation thereof to the conference.

Rule III

On the first and third Mondays of each month of the year, a conference of the Judges of the Court shall be held, at which three judges shall constitute a quorum, and at which conference a majority of the judges present shall rule.

[fol. 211]

Rule IV

All requests for hearings and considerations of proceedings not called upon regular assignments, including motions and demurrers not acted upon under the rule relating thereto, applications for restraining orders, injunctions, receiverships, mandamus, quo warranto, habeas corpus and defaults, and arraignments, fixing of bail, bond forfeitures, extensions of time to plead, etc., shall be on a simple written form which the Court Clerk will design and furnish, upon which shall be endorsed the order of the Judge acting as assignment judge, either formally disposing of the request or assigning same to some other division of the Court for disposition; and all matters and proceedings not on such regular assignments shall be so considered as to interfere as little as possible with the work of the various divisions of the Court upon such regular assignments.

Rule V

On Monday of each week, beginning at 9 o'clock and extending until noon, or so much of the said time as may be necessary for the purposes herein designated the Court will hear and pass on motions and demurrers filed prior to Monday of the preceding week, without notice to counsel. Motions or demurrers that are presentable under this rule, and that are not presented, may be dismissed or stricken for failure to prosecute the same, unless by agreement of counsel with consent of the Court they are continued to a subsequent motion day designated in the agreement.

Motions or demurrers presentable under this rule upon any given Monday, and not then heard, are subject to call and hearing on the succeeding motion day as herein designated unless by agreement of the parties the same are continued to a motion day certain.

Any motions or demurrers pending at the time of the adoption of these rules may be heard upon any subsequent rule day upon three days' notice by either party if on the said rule day there is time for hearing the same after disposing of the motions and demurrers hearable under this rule, or said motions or demurrers may be heard without notice at special settings for that purpose.

The Court will not be bound by a stipulation of counsel for the continuance of a motion or demurrer past three motion days.

Rule VI

All stipulations with reference to matters pending in Court must be in writing to be binding upon the parties, and are then subject to

[fol. 212] the discretion of the Court in the administration of the business of the Court.

Orders taken by counsel upon oral stipulations will be at the peril of the party taking them of having them set aside, should any contest arise over the terms or existence of the oral agreement or stipulation.

Rule VII

No files in any pending case shall be taken from the Court Clerk's office within a day preceding the time when the case is set for trial upon any setting of the docket, nor thereafter within one day of the time in which it may be reached for trial, except upon a special order of the Court or Judge.

The Clerk will keep a book or file containing the receipts of counsel for papers showing the time when the files were taken, what files were taken, and when they are returned, and it shall be incumbent upon counsel returning files to see that the date of the return is entered upon the said book according to the fact.

No files shall at any time be taken from the Clerk's office except upon a written receipt of the attorney withdrawing the same, and not at all, except by members of the bar of the county or upon their receipt, and no files shall be detained by any counsel taking them from the Clerk's office for a longer period than three days, unless upon a special order of the Court or Judge thereof. Upon any violation of this rule, by any attorney, the Clerk of the Court will refuse to permit such attorney to take any other files from the Clerk's office except upon a special order of the Court or Judge.

Rule VIII

Except in cases of emergency, motions for the appointment of receivers, to vacate attachments or garnishments, for the granting of a temporary injunction, and other motions requiring notice, shall be assigned for hearing on the rule day succeeding the date of filing.

Rule IX

Motions and demurrers filed but not presented by the counsel for such moving party, will be stricken for failure to present, and such party given five days thereafter to further plead or answer, unless the Judge before whom the pleading is assigned for consideration shall deem the same frivolous, in which event it shall be stricken for that reason without time to the pleader to plead further.

[fol. 213]

Rule X

No jury trials will be commenced on Saturday, and no Court will be held on that day except for the completion of trials of causes commenced and not completed on the previous day, and for the consideration of matters which the Judge acting as assignment judge may determine are especially urgent.

Rule XI

Defaults in civil cases, except divorce cases, will be taken only on Saturday.

Rule XII

Each judge, calling a regular assigned docket, shall when completing that day's first call, immediately proceed to sound the succeeding day's docket for the purpose of enabling the Court to be advised of the condition of the business to be transacted on such succeeding day, and for the convenience of counsel in preparing for the trial of such causes.

Rule XIII

Total relief from jury service may be granted only by the acting assignment judge.

Rule XIV

Attorneys and others will arrange with the Judge's Reporter for all interviews with a member of the Court.

Rule XV

No divorce case will be tried or considered on its merits until the petition therefor has been on file in the office of the Court Clerk of the County for a period of thirty days and in cases hereafter filed, no decrees of divorce will be granted until the defendant shall have been either actually or constructively served with process fixing the time within which he shall answer the petition; provided, however, that the Judge who tries such cause may, in the decree, recite reasons why a waiver of summons or answer, for good cause shown, entitles the plaintiff to be relieved from the operation of this rule, in which event the said waiver shall be acknowledged before a person duly authorized to administer oaths.

Rule XVI

Each Judge of this Court shall, upon adjournment of his division of the Court, cause to be filed with the acting assignment judge a brief statement of the disposition of matters assigned to his division [fol. 214] for that day, including any action taken in causes not on such assignment.

Rule XVII

Attorneys will be required to present formal orders in causes not coming on regularly for hearing, at times when the Court is not engaged in hearing of other causes.

When the Court is in session, all matters will be discussed with the Court in an orderly manner. No member of the Bar will have the ear of the Court in private while Court is in session, unless at the instance of the Court himself, and then both sides will participate in the discussion, but only at the instance of the Court.

Rule XVIII

Argument on motions will be heard only when the attorneys presenting same are standing, unless the Court for good cause permits counsel to argue seated, and every member of the Bar shall have the floor while presenting motions and demurrers to the exclusion of all other attorneys and all other persons. Reasonable opportunity will always be given to counsel on the other side to answer arguments made, but no interference will be brooked during argument except objections properly made to the Court.

Rule XIX

Verdicts in civil cases returned by juries will be read in open court by the Clerk of the Court, and the jury will indicate whether the same is the verdict of such jury; and thereafter, counsel will save any exceptions desired to the verdict. Judgments will be rendered on the verdicts of the jury at once.

(Signed) W. B. Williams, Redmond S. Cole, Valjean Biddison, Albert C. Hunt, District Judges.

I, Frances Harvey, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in the District Court as published by order of Court for the information of the lower Court of Tulsa County, Oklahoma, this 16th day of Feb., 1922.

W. Frances Harvey, Court Clerk, by W. R. Seare, Deputy.
(Seal.)

[fol. 215] IN UNITED STATES DISTRICT COURT

EXCEPTIONS TO REPORT OF SPECIAL MASTER—Filed June 20, 1922

Comes now the respondent, Anna B. Chamberlin, and objects and excepts to the report of the Hon. A. F. McGarr, Special Master, heretofore appointed by the court to hear the motion filed by the Trustee in Bankruptcy, George Harrison, for an order requiring the respondent, Anna B. Chamberlin, to turn over to him the sum of $10,000.00 as an asset of the estate of said bankrupt from said testimony and report the findings of fact and conclusions of law thereon.

I

The pleadings in said cause show that said Special Master was without jurisdiction to hear said cause, and the findings of said Special Master that he had jurisdiction to hear said cause and report thereon is not supported by the pleadings.

II

In overruling the special appearance and objection to the jurisdiction by the respondent, Anna B. Chamberlin, in the report of said

Special Master is not supported by the pleadings in said cause and is contrary to law.

III

That the findings of such Special Master that the Western Rope & Manufacturing Company is the successor of the Western Rope & Cordage Company, and that said bankrupt, Western Rope & Manufacturing Company took over the assets of the Western Rope & Cordage Company, and assumed its liabilities in the fall of 1917 is contrary to, and not supported by the evidence.

IV

That the evidence in the record shows that the Western Rope & Manufacturing Company, bankrupt, herein, purchased certain assets of the Western Rope & Cordage Company in September, 1917 and that said assets of said Western Rope & Cordage Company purchased by said bankrupt were transferred on the books of said Western Rope & Manufacturing Company, and that said record of said Company, and the records of said Western Rope & Cordage Company show conclusively that the item of $10,000.00 in controversy herein was not sold, transferred or assigned to, and ever became an asset of the Western Rope & Manufacturing Company. The evidence in the record further shows that said item of $10,000.00 was charged off the books of said Western Rope & Cordage Company prior to the sale and trans-[fol. 216] fer by said Company of any of its assets to the Western Rope & Manufacturing Company, and that said item of $10,000.00 did not on the date of said sale and transfer appear on the books of said Western Rope & Cordage Company as an asset of said Company.

V

That the evidence offered in said cause shows that on August 30, 1917, Mrs. A. C. Leftwich, daughter of the respondent, and B. M. Gessel, owned all the stock of the Western Rope & Cordage Company and that said company was wholly solvent, and that none of the parties who have claims which have been proved and allowed in this cause, or which are provable and allowable in this cause were creditors of said Western Rope & Manufacturing Company on said date.

VI

The evidence further shows that said check for $9,500.00 was signed by B. M. Gessel, and that said B. M. Gessel and Mrs. A. C. Leftwich had full and complete notice and knowledge of all the facts and circumstances surrounding said transaction, and that said B. M. Gessel and Mrs. A. C. Leftwich as owners of the entire capital stock of said Western Rope & Cordage Company participated in and had full and complete notice of said transaction.

VII

The evidence in the record further shows that said item of $9,500.00 was entered in the books of said Western Rope & Cordage Company, and charged to the account of said B. M. Gessel, and failed to disclose any fact or circumstance of fraud or concealment on the part of Mrs. A. C. Leftwich or B. M. Gessel, or either of them.

VIII

Respondent objects and excepts to the first finding of fact incorporated in the report of said Special Master for the reason that same is not supported by the evidence and is contrary to the law and the evidence.

IX

Respondent further objects and excepts to the second finding of fact incorporated in the report of said Special Master for the reason that the evidence in the record shows that all the officers and stockholders of said Western Rope & Cordage Company had full and complete notice of all the facts and circumstances surrounding said trans-[for. 217] action whereby said sum of $9,500.00 was withdrawn from the funds of said corporation. That said finding is not supported by the evidence, and is contrary to the law and the evidence.

X

Respondent objects and excepts to the third finding of fact incorporated in said report of said Special Master for the reason that the evidence in said record does not show that said sum of $10,000.00 is now in the possession of the respondent. Said finding is not supported by the evidence and is contrary to the law and the evidence.

XI

Respondent further objects and excepts to the conclusion reached by said Referee in said report, that said item of $10,000.00 is an asset of the bankrupt estate. That the claim of the respondent to said sum is fraudulent; colorable and not real, and that said sum is subject to the summary jurisdiction of this court for the reason that said findings and each of them are not supported by the evidence, and are contrary to the law and the evidence.

XII

Respondent objects and excepts to the conclusion of law contained in the report of said Special Master to the effect that said sum of $10,000.00 is subject to the summary jurisdiction of this court, for the reason that said conclusion is contrary to law and is not supported by the law or the evidence.

XIII

The respondent further asks that she be allowed a general exception to all the findings of fact and conclusions of law contained in said report of said Special Master, for the reason that said findings of fact and conclusions of law, and each of them, are against the weight of the evidence, and are not supported by the law or the evidence.

H. B. Martin, Attorney for the Respondent, Anna B. Chamberlin.

IN UNITED STATES DISTRICT COURT

REVIEW OF ORDER REQUIRING THE RESPONDENT, ANNA B. CHAMBERLIN, TO DELIVER OVER TO THE TRUSTEE HEREIN $10,000.00 IN CURRENCY NOW IN HER POSSESSION WHICH IS THE PROPERTY OF THE BANKRUPT AND TO WHICH THE TRUSTEE IS ENTITLED—Filed March 3, 1923.

[fol. 218] Phillip B. Kates, Esq., for trustee; H. B. Martin, Esq., for respondent.

I find the facts in favor of the trustee and the order of the Referee is to be confirmed. The attorneys for the trustee will prepare and submit to this court at Muskogee on March 14th form of order or order for final judgment in this matter. Let the clerk notify all attorneys and the following fees will be allowed in the case:

For stenographer, reporting and transcribing testimony..	$58.00
Hotel and traveling bill.....	12.62
Special Master's fee.....	100.00
Total	$170.62

R. L. Williams, Judge.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—Filed March 14, 1923

Now on this 14th day of March, 1923, this matter came on for hearing before the judge of the District Court, at Muskogee, on the objection of Anna B. Chamberlin, to the report of A. F. McGarr special master herein, appointed to hear the testimony, examine the record in the bankruptcy matter, and report to the court upon the application of the trustee herein for an order on the said Anna B. Chamberlin respondent to deliver to the said trustee in bankruptcy herein, the sum of $10,000.00 in her possession, alleged to be an asset of the bankrupt estate, fraudulently withheld by the said respondent Anna B. Chamberlin.

And the court being fully advised in the premises finds the facts in favor of the trustee in bankruptcy and against the said Anna B. Chamberlin, respondent; and finds that the said Anna B. Chamberlin has in her possession the sum of ten thousand dollars in currency, which is an asset of the bankrupt's estate; and that the said respondent holds the said money without color of title, and in fraud of the rights of the trustee in bankruptcy.

Wherefore it is by the court ordered, adjudged and decreed that the said Anna B. Chamberlin forthwith deliver to George Harrison, trustee in bankruptcy of Western Rope and Manufacturing Company, bankrupt, the sum of $10,000.00.

And further that the said Anna B. Chamberlin pay the costs of [fol. 219] this proceeding amounting to $170.62. To which the respondent excepts. Said respondent is hereby allowed thirty days from this date in which to file her praecipe for record and to do all things necessary to perfect this appeal and to execute bond. Supersedeas bond fixed at $20,000.00.

R. L. Williams, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed March 14, 1923

To the Hon. Robert L. Williams, District Judge:

Your petitioner, Anna B. Chamberlin, being aggrieved by the findings and decree rendered and entered in the above entitled cause on the 14th day of March, 1923, in favor of George Harrison, trustee herein, and against your petitioner, adopting and confirming the report of the Hon. A. F. McGarr, Special Master, heretofore appointed on the 20th day of February, 1922, to take evidence and to report to the Court his findings of fact and conclusions of law therein, and overruling each and all of the exceptions to said findings and report of said Special Master filed herein by your petitioner hereby appeals from said findings and decree entered herein on said 14th day of March, 1923, to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the assignment of errors filed herewith, and she prays that her appeal be allowed, and that citation be issued as provided by law. That a transcript of the record, proceedings and documents upon which said findings and decree were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit under the rules of said court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be made by her be made.

H. B. Martin, Counsel for Petitioner, Anna B. Chamberlin.

In United States District Court

Assignment of Errors—Filed March 14, 1923

Now comes Anna B. Chamberlin, and files the following assignment of errors upon which she will rely upon her prosecution of the appeal in the above entitled cause from the findings and decree made by this Honorable Court on the 14th day of March, A. D. 1923, in favor of George Harrison, trustee, and against your petitioner, approving and [fol. 220] confirming the report of the Hon. A. F. McGarr, Special Master, theretofore appointed on the 20th day of February, 1922, to take evidence and report to the court his findings of fact and conclusions of law thereon, and overruling each and all of the exceptions to said findings and report of said Special Master filed in said cause by Anna B. Chamberlin.

I

The pleadings in said cause show that said Special Master was without jurisdiction to hear said cause, and the findings of said Special Master that he had jurisdiction to hear said cause and report thereon, is not supported by the pleadings.

II

The overruling of the special appearance and objection to the jurisdiction by the respondent, Anna B. Chamberlin to the report of said Special Master is not supported by the pleadings and is contrary to law.

III

That the findings of such Special Master that the Western Rope & Manufacturing Company is the successor of the Western Rope & Cordage Company, and that said bankrupt, Western Rope & Manufacturing Company took over the assets of the Western Rope & Cordage Company, and assumed its liabilities in the fall of 1917 is contrary to, and not supported by, the evidence.

IV

That the evidence in the record shows that the Western Rope & Manufacturing Company, bankrupt, herein, purchased certain assets of the Western Rope & Cordage Company in September, 1917, and that said assets of said Western Rope & Cordage Company purchased by said bankrupt were transferred on the books of said Western Rope & Manufacturing Company, and that said records of said company, and the records of said Western Rope & Cordage Company show conclusively that said item of $10,000.00 in controversy was not sold or transferred or assigned to, and never became an asset of the Western Rope & Manufacturing Company. The evidence in the record further shows that said item of $10,000.00 was charged off the books of said Western Rope & Manufacturing Company prior to the sale and

transfer by said company of any of its assets to the Western Rope & Manufacturing Company, and that said item of $10,000.00 did not on the date of said sale and transfer appear on the books of said Western Rope & Cordage Company as an asset of said company.

[fol. 221]

V

That the evidence offered in said cause shows that on August 30, 1917, Mrs. A. C. Leftwich, daughter of the respondent, and B. M. Gessel owned all the stock of the Western Rope & Cordage Company, and that said company was wholly solvent, and that none of the parties who have claims which have been proved and allowed in this cause, or which are provable and allowable in this cause were creditors of said Western Rope & Cordage Company on said date.

VI

The evidence further shows that said check for $9,500.00 was signed by G. M. Gessel and that said B. M. Gessel and Mrs. A. C. Leftwich had full and complete notice and knowledge of all the facts and circumstances surrounding said transaction, and that said B. M. Gessel and Mrs. A. C. Leftwich as owners of the entire capital stock of said Western Rope & Cordage Company participated in and had full and complete notice of said transaction.

VII

Evidence in the record further shows that said item of $9,500.00 was entered in the books of said Western Rope & Cordage Company, and charged to the account of said B. M. Gessel, and failed to disclose any act or circumstance of fraud or concealment on the part of Mrs. A. C. Leftwich and B. M. Gessel, or either of them.

VIII

That the first finding of fact incorporated in the report of said Special Master is not supported by the evidence, and is contrary to the law and the evidence.

IX

That the second finding of fact incorporated in the report of said Special Master is not supported by the evidence, and is contrary to the law and the evidence.

X

That the third finding of fact incorporated in the report of said Special Master is not supported by the evidence, and is contrary to the law and the evidence.

XI

That the conclusion of law set out in the report of said Special [fol. 222] Master to the effect that said item of $10,000.00 is an asset of the bankrupt estate is not supported by the evidence and is contrary to the law and the evidence.

XII

That the conclusion of law set out in said report of said Special Master to the effect that the claim of the respondent to said sum of $10,000.00 is fraudulent, colorable and not real is not supported by the evidence and is contrary to the law and the evidence.

XIII

That the conclusion of law set out in the report of said Special Master to the effect that said sum of $10,000.00 is subject to the summary jurisdiction of this court is not supported by the evidence, and is contrary to the law, and the evidence.

XIV

That the court erred in overruling the first objection and exception of the respondent to the report of said Special Master.

XV

That the court erred in overruling the second objection and exception of the respondent to the report of said Special Master.

XVI

That the court erred in overruling the third objection and exception of the respondent to the report of said Special Master.

XVII

That the court erred in overruling the fourth objection and exception of the respondent to the report of said Special Master.

XVIII

That the court erred in overruling the fifth objection and exception of the respondent to the report of said Special Master.

XIX

That the court erred in overruling the sixth objection and exception of the respondent to the report of said Special Master.

[fol. 223] XX

That the court erred in overruling the seventh objection and exception of the respondent to the report of said Special Master.

XXI

That the court erred in overruling the eighth objection and exception of the respondent to the report of said Special Master.

XXII

That the court erred in overruling the ninth objection and exception of the respondent to the report of said Special Master.

XXIII

That the court erred in overruling the tenth objection and exception of the respondent to the report of said Special Master.

XXIV

That the court erred in overruling the eleventh objection and exception of the respondent to the report of said Special Master.

XXV

That the court erred in overruling the twelfth objection and exception of the respondent to the report of said Special Master.

XXVI

That the court erred in overruling the thirteenth objection and exception of the respondent to the report of said Special Master.

XXVII

Error of the court in finding the facts in favor of George Harrison, trustee, and against the respondent, Anna B. Chamberlin.

XXVIII

Error of the court in confirming the report of said Special Master, as to findings of fact.

XXIX

Error of the court in confirming the report of said Special Master as to conclusions of law.

[fol. 224] XXX

Error of the court in entering judgment in favor of said trustee, George Harrison, and against the respondent, on the report of said Special Master.

XXXI

That the judgment on said report of said Special Master in favor of said trustee and against the respondent, Anna B. Chamberlin, is contrary to the evidence.

XXXII

That the judgment on the report of said Special Master in favor of said George Harrison, and against the respondent, Anna B. Chamberlin, is contrary to law.

XXXIII

That the judgment of the court on the report of said Special Master is contrary to the law and is not sustained by the evidence.

H. B. Martin, Counsel for Appellant.

In United States District Court

Order Allowing Appeal—Filed March 14, 1923

On this the 14th day of March, 1923, came the respondent, Anna B. Chamberlin, by H. B. Martin, her counsel, and presented her petition for appeal, and its assignment of errors. And upon consideration thereof, it is now ordered and adjudged that said petition and assignment of errors be, and the same are hereby filed, and that the petition for appeal be, and the same is hereby allowed to be reviewed in the United States Circuit Court of Appeals for the Eighth Circuit upon the respondent executing bond according to law in the sum of $20,000.00.

If it is desired to supersede the judgment herein that upon the giving and approval of said bond all further proceedings therein shall be stayed pending the final disposition of said cause.

If said bond is not intended to operate as supersedeas then it may be executed in the sum of $20,000.00 security for costs.

R. L. Williams, Judge.

[fols. 225 & 226] Election to Have Record Printed

Comes now the appellant by her attorney, H. B. Martin, and elects to take this cause up upon printed transcript, allowing the clerk of the District Court of the United States for the Eastern District of Oklahoma to supervise the printing of the same.

Signed this 12- day of April, 1923.
Anna B. Chamberlin, Appellant, by H. B. Martin, Her Attorney.

Filed Apr. 13, 1923. W. V. McClure, Clerk.

Bond on Appeal for $20,000—Approved and filed April 19, 1923; omitted in printing

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[fol. 227] Citation—In usual form, showing service on Phillip Kates; omitted in printing

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In United States District Court

Order Enlarging Time—Filed April 10, 1923

Now on this 10th day of April, 1923, upon the application of H. B. Martin, counsel for appellant Anna B. Chamberlin in the above entitled action, and for good cause shown, it is hereby ordered that the time for making, preparing and filing the record in this case on appeal to the United States Circuit Court of Appeals for the Eighth Circuit in the office of the clerk of said United States Circuit Court of Appeals at St. Louis, Missouri, be, and the same is hereby enlarged, and said appellant, Anna B. Chamberlin, is given until and including the 14th day of May, 1923, within which to make, prepare and file the record in said cause on appeal in this case.

R. L. Williams, U. S. District Judge.

Attest: W. V. McClure, Clerk of the U. S. District Court for the Eastern District of Oklahoma, by W. V. McClure, Clerk.

In United States District Court

Order Further Enlarging Time—Filed May 4, 1923

Now on this 4th day of May, 1923, upon the application of H. B. Martin, counsel for appellant Anna B. Chamberlin in the above entitled action, and for good cause shown, it is hereby ordered that the time for making, preparing and filing the record in this case on appeal to the United States Circuit Court of Appeals for the Eighth Circuit in the office of the clerk of said United States Circuit Court of Appeals at St. Louis, Missouri, be, and the same is hereby enlarged, and said appellant, Anna B. Chamberlin, is given until and includ-

ing the 14th day of July, 1923, within which to make, prepare and file the record in said cause on appeal in this case.

R. L. Williams, U. S. District Judge.

[fol. 228] Attest: W. V. McClure, Clerk United States District Court for the Eastern District of Oklahoma.

In United States District Court

Order Enlarging Time—Filed July 2, 1923

Now, on this the 2nd day of July, A. D., 1923, for good cause shown, it is hereby ordered that the time for filing the record in this case on appeal to the Circuit Court of Appeals for the Eight- Circuit in the Office of the Clerk of said Circuit Court of Appeals for the Eight- Circuit, in St. Louis, Missouri, be and the same is hereby enlarged and the appellant is given until and including the 1st day of August, A. D., 1923, within which to file the record on appeal in this cause.

R. L. Williams, Judge.

In United States District Court

Amended and Supplemental Præcipe for Transcript of Record—Filed April 26, 1923

To the Clerk of said Court:

You are requested to take a transcript of the record to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed in the above entitled cause in open court on the 14th day of March, 1923, on the petition of the respondent, Anna B. Chamberlin, and to include in such transcript of record the following, and no other exhibits, to-wit:

1. The order of adjudication.
2. The order appointing George Harrison, Trustee.
3. The order approving bond of George Harrison, Trustee.
4. Motion of George Harrison to make additional parties filed August 31, 1921.
5. Order of Referee entered on August 31, 1921, making additional parties.
6. Motion to vacate order making additional parties.
7. Order of Referee overruling motion to vacate order making additional parties.
8. Petition of George Harrison, Trustee, to require the respondent, Anna B. Chamberlin, to deliver $10,000.00 in currency to said Trustee filed herein on the 10th day of November, 1921.

[fol. 229] 9. Demurrer of Anna B. Chamberlin to the petition of

George Harrison, Trustee, to require respondent to deliver $10,000.00 in currency to said Trustee.

10. Minute of Clerk entered November 12, 1921, showing overruling of demurrer to said petition.

11. Answer of respondent, Anna B. Chamberlin, to said petition of said Trustee.

12. Reply of George Harrison to the answer of respondent.

13. Order of reference entered in said cause on the 25th day of February, 1922, referring said petition to the Hon. A. F. McGarr, Referee in Bankruptcy to take evidence, and to report to the court findings of fact and conclusions of law.

14. Amended order of reference.

15. Report of Special Master and schedules "A" and "B" of the testimony taken by said Special Master in said bankruptcy proceedings.

16. Exceptions of Anna B. Chamberlin to the report of said Special Master.

17. Opinion of the Court.

18. Final Decree.

19. Petition for appeal.

20. Assignments of Error.

21. Order allowing appeal and fixing bond.

23. Order enlarging time for filing record.

24. Election to have record printed.

25. Appeal bond.

26. Amended and supplemental præcipe for record.

27. Orders further enlarging time for filing record.

28. Citation.

H. B. Martin, Counsel for Appellant.

Service of the within and foregoing præcipe hereby accepted on this the 25th day of April, 1923.

Phillip Kates, Counsel for Appellee. George Harrison, Trustee.

[fol. 230] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of In the Matter of Western Rope & Manufacturing Company, a corporation, Tulsa, Oklahoma, Bankrupt; In Bankruptcy, No. 2391, as was ordered by præcipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto, and returned herewith, is the original citation issued in this cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskogee, this 12th day of July, A. D. 1923.

W. V. McClure, Clerk, by Lacy Grimes, Deputy. (Seal.)

[fol. 231] In United States Circuit Court of Appeals, Eighth Circuit

No. 6403

Anna B. Chamberlin, Appellant,

vs.

George Harrison, Trustee, etc.

Appearance of Counsel—Filed July 20, 1923

The Clerk will enter my appearance as Counsel for the Appellant.
Henry B. Martin, P. O. Box 1471, Tulsa, Oklahoma.

[File endorsement omitted.]

Appearance of Counsel—Filed Sept. 8, 1923

The Clerk will enter my appearance as Counsel for the Appellee.
Philip Kates.

[File endorsement omitted.]

[fol. 232] Appearance of Counsel—Filed Oct. 26, 1923

The Clerk will enter my appearance as Counsel for the Appellee.
S. A. Mitchell, 721 Locust St., St. Louis, Mo. Edgar A. De Meules, 606 Cosden Bldg., Tulsa, Okla. Elmer H. Grimm, 721 Locust St., St. Louis, Mo.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 6403

ANNA B. CHAMBERLIN, Appellant,

vs.

GEORGE HARRISON, Trustee in Bankruptcy, etc.

Appeal from the District Court of the United States for the Eastern District of Oklahoma

and

No. 250, Original

ANNA B. CHAMBERLIN, Petitioner,

vs.

GEORGE HARRISON, Trustee in Bankruptcy, etc.

On Petition to Revise

ARGUMENT AND SUBMISSION OF CAUSE—Feb. 2, 1924

These causes, Nos. 6403 and 250, Original having been called [fol. 233] for hearing in their regular order, Mr. Philip Kates, counsel for appellee and respondent, calls attention of the Court to the motion heretofore filed for an order requiring the appellant and petitioner to file a new supersedeas bond with sufficient surety or to dismiss the appeal and to the fact that the order of this Court heretofore made requiring the filing of a new bond has not been complied with. After hearing counsel this Court thereupon ruled that a cost bond by appellant and petitioner be filed within ten days from and after this date.

Argument of these causes on the merits was thereupon commenced by Mr. H. B. Martin for appellant and petitioner, continued by Mr. Philip Kates and Mr. S. A. Mitchell for appellee and respondent, and concluded by Mr. H. B. Martin for appellant and petitioner.

Thereupon, these causes were submitted to the Court on the transcript of the record from said District Court in cause No. 6403, the printed record in No. 250 Original, and the briefs of counsel filed in both causes.

[fol. 234] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Mr. H. B. Martin (Mr. Roy A. Reynolds was with him on the brief), for appellant and petitioner.

Mr. Philip Kates and Mr. Samuel A. Mitchell, for appellee and respondent.

[fol. 235] Before Stone and Lewis, Circuit Judges, and Phillips, District Judge

OPINION—Filed April 23, 1924

STONE, Circuit Judge, delivered the opinion of the court.

These are a petition to revise and an appeal from an order of the Bankruptcy Court in a summary proceeding requiring petitioner (appellant) to turn over certain money to the trustee as property of the bankrupt.

Petitioner (apellant) was made an additional party in the bankruptcy proceeding and served with a writ to show cause why she should not turn over property in her possession because the same was part of the bankrupt estate. From the first, and all through the proceeding, petitioner (appellant) has challenged the jurisdiction of the Bankruptcy Court to hear and determine this matter in a summary proceeding, claiming that it can only be examined in a plenary action. The bases upon which the referee and court below retained jurisdiction and upon which respondent (appellee) hopes to sustain the jurisdiction here is that the contention of petitioner (appellant) that its claim is adverse is merely colorable within the meaning of Mueller v. Nugent ,184 U. S. 1, and other similar cases. We think the Mueller case and quite a few other cases before the various courts of appeals have established the doctrine that where the claim alleged to be adverse is not really so but only colorably such, that the Bankruptcy Court has jurisdiction to determine the character of the claim in that respect and, if it is colorable only, to adjudicate the merits of the matter in a summary manner. The application of this rule involves a definition of what is meant by colorable. In our judgment, the meaning of that word as used in this connection is that a claim alleged to be adverse is only colorably so when, admitting the facts to be as alleged by the claimant, there is, as matter of law, no adverseness in the claim.

Measured by the above standard, we cannot say that this claim is merely colorable. The claim here is, as shown by the testimony, that a Mrs. Gessel, who was a stockholder in a corporation which was the immediate predecessor of the bankrupt, was given money from the assets of that company, with the permission of the only other stockholder with herself in that company, at a time when such company was entirely solvent; the sums taken might have been [fol. 236] declared as dividends; that this money was given to her

mother, the petitioner (appellant) in payment of indebtedness due petitioner (appellant) from Mrs. Gessel. However improbable or even fraudulent this claim may be, yet that matter has no bearing upon determination of jurisdiction but is pertinent only on the merits in the court properly having jurisdiction of the controversy. For the purposes of determining whether this claim is merely colorable, we think we must take it that the above circumstances would be shown and might be found to be true. In that view of the matter, we cannot say, as matter of law, that there is no merit to the claim.

As matter of fact is involved in the hearing in this court, the proper method of review is by appeal. Therefore, the petition to revise will be dismissed. As the judgment below was wrong, the appeal will be sustained and the order of the Bankruptcy Court reversed with instruction to dismiss the proceeding without prejudice to the institution of a plenary action by the trustee in any court of proper jurisdiction.

[fol. 237] In United States Circuit Court of Appeals

[Title omitted]

Decree—April 23, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order and decree of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that Anna B. Chamberlin have and recover against George Harrison, Trustee in Bankruptcy of the Western Rope and Manufacturing Company, a corporation, bankrupt, the sum of — Dollars for her costs in this behalf expended, to be paid by said Trustee out of any funds in his hands belonging to said Bankrupt Estate.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with instructions to dismiss the proceeding without prejudice to the institution of a plenary action by the Trustee in any Court of proper jurisdiction.

[fol. 238] In United States Circuit Court of Appeals

[Title omitted]

Petition for Rehearing—Filed June 7, 1924

Now comes George Harrison, trustee of Western Rope and Manufacturing Company, bankrupt, and respectfully prays the Court for

a rehearing in the foregoing cause, and for grounds for the petition for rehearing assigns the following:

I

After this cause was argued and submitted upon the record and briefs, the Supreme Court of the United States, in the case of Taubel Scott Kitzmiller Co., Inc., v. David I. Fox et al., No. 188, October [fol. 239] Term, has held:

"By the Act of 1898, as originally enacted, the power of the bankruptcy court to adjudicate, without consent, controversies concerning the title arising under either section 67e or section 60b or section 70e, was confined to property of which it has possession. The possession which was thus essential to jurisdiction need not be actual. Constructive possession is sufficient. It exists where * * * property is held by one who makes a claim, but the claim is colorable only. As every court must have power to determine, in the first instance, whether it has jurisdiction to proceed, the bankruptcy court has, in every case, jurisdiction to determine whether it has possession, actual or constructive. It may conclude, where it lacks actual possession, that the physical possession held by some other persons is of such a nature that the property is constructively within the possession of the Court."

It is respectfully submitted that the doctrine that actual possession by the trustee is necessary to give the Court summary jurisdiction is thus overruled by the Supreme Court.

In Mueller v. Nugent, 184 U. S. 1, the Court says:

"But suppose that respondent had asserted that he had the right to possession by reason of a claim adverse to the bankrupt, the bankruptcy court had the power to ascertain whether any basis for such a claim actually existed at the time of filing the petition."

In the opinion in the present case, which we ask to be reheard, the Court says:

"However improbable or even fraudulent this claim may be, yet that matter has no bearing upon determination of jurisdiction, but [fol. 240] is pertinent only on the merits in the court properly having jurisdiction of the controversy."

It is submitted that if under the Nugent case the Court should inquire whether there is any basis for the claim, then necessarily there should be a determination whether the claim is fraudulent or fictitious. If it is fraudulent and fictitious it is colorable and there is constructive possession.

Since the decision of the Supreme Court in the Taubel case has been announced it is respectfuly submitted that it is essential to determine whether the claim is fictitious and fraudulent; for the determination of this question will determine whether there is jurisdiction to proceed summarily.

II

The Court erred in its definition of the word "colorable" as used in the Nugent case (184 U. S. 1). In its opinion this Court says:

"In our judgment the meaning of that word (colorable) as used in this connection is that a claim alleged to be adverse is only colorably so when admitting the facts to be as alleged by the claimant, there is, as a matter of law, no adverseness in the claim."

It is submitted that this definition is in conflict with the unambiguous language of the Nugent case, where the Court say:

"But suppose that respondent had asserted that he had the right to possession by reason of a claim adverse to the bankrupt, the bank-[fol. 241] ruptcy court had power to ascertain whether any basis for such a claim actually existed at the time of filing the petition."

The Court is held to have power to determine whether any basis actually existed for such a claim. The claim as to which the Court may inquire is expressly said by the Supreme Court to be adverse.

It is submitted that the effect of the definition by this Court would be to limit the power of the Court to inquire not whether any basis for an adverse claim actually existed, but whether such a claim were asserted.

It is submitted that the opinion in this case is in conflict with the Nugent case and the Taubel case.

III

The decision in this is in conflict with the decisions of the Circuit Court of Appeals for the Ninth Circuit.

In re Eilers Music House, 270 Fed. 915, at page 92, adopting the report of the Special Master, per curiam:

"The challenge to the jurisdiction of this Court to dispose of the controversy in a summary proceeding is overcome by the conclusion that these assets are a part of the general estate of the Music House and merely held by the Oregon Eilers as an agent or branch thereof. The jurisdiction of this Court is not ousted by the circumstance that an adverse claim has been set up. Before there is an ouster the claim must have such foundation in law and in fact as to make it appear to the Court highly probable that it exists, can be maintained and is asserted in good faith (Remington on Bankruptcy 1654½; [fol. 242] Sweer v. Brown, 130 Fed. 328, 64 C. C. A. 574; In re Holbrook Shoe & Leather Co., 165 Fed. 973)."

IV

The record in this case shows that the appellant was heard in a plenary suit, and the opinion should be withdrawn and the District Court affirmed upon the finding of facts.

In the case of In re Eilers Music House, 270 Fed. 915, a rehearing was granted. The Court did not recede from its former holding, but upon an examination of the record, decided that the hearing below had in effect been a plenary suit (274 Fed. 330).

The matter was not discussed in the first hearing, as it was not in this, but the record disclosed a full hearing and the Court in its second opinion held that the evidence shows that the property was that of the bankrupt.

The facts in that case, in their legal import, are almost identical with the facts in the present record.

The trustee had first brought a suit in the state court and afterwards instituted the summary proceeding.

The appellant in the Eilers case appeared in the bankruptcy case and denied jurisdiction. The appellant also alleged that the petition of the trustee for the summary order showed no facts sufficient to enable the Court to hear the controversy. The first syllabus on the rehearing (274 Fed. 330) is:

"Where a court of bankruptcy has jurisdiction of a plenary suit by a trustee the fact that he proceeds by petition for a summary order is [fol. 243] immaterial, if the parties appear and there is a full hearing on the merits, and in such a case the proceeding will be treated as a plenary suit."

The petition of the trustee in this case sets out facts showing that the money was the money of the bankrupt (Rec., p. 7.) (Note.—This is not a proceeding to set aside a preference or to recover property transferred by the bankrupt, but to recover property of the bankrupt the title to which never passed from the bankrupt.) The demurrer to the petition was overruled (Rec., p. 10). The appellant answered fully (Rec., pp. 10 to 13), setting up affirmative defenses. And thereafter the matter was fully heard by a Special Master, who reported that the claim was fraudulent and colorable. The evidence was voluminous.

The answer denies the jurisdiction of the Court, as the answer did in the Eilers case. And the Ninth Circuit expressly held that consent was not necessary to confer jurisdiction. On page 333, 274 Fed., the Court says:

"That the Court had jurisdiction to deal with and determine those matters in a plenary suit between the parties with or without the defendant's consent, is shown by Section 70, subdivision (e) of the Bankruptcy Act (Collett v. Adams, 249 U. S. 545)."

In the Eilers case this matter was first brought up on rehearing. And it is submitted that a rehearing in this case should be granted, and upon examination of the records the Court should hold that in [fol. 244] effect a plenary suit has been tried and the matter concluded.

The Eilers case went to the Supreme Court of the United States by appeal and certiorari. And in addition an attempt was made to secure a writ of prohibition against the bankruptcy court. Certiorari

was denied, the appeal was dismissed, and the writ of prohibition refused (66 Lawyers Edition 397, 405, 419).

V

The decision in this case is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in In re Uttenbogard, 295 Federal 778, where the Court says (on page 781):

"If there is any liability of the commission merchant upon such a state of facts, he claiming in good faith to hold these sums adversely, he is beyond question only subject to a plenary suit in a court of competent jurisdiction.

"The District Court should have first passed on the jurisdiction of the Referee to proceed summarily in order to determine whether there is reasonable ground to sustain the bank's claim that it is entitled to retain the money in controversy, and that the adverse claim is made in good faith."

VI

The opinion in this case is in conflict with the holding of the Circuit Court of Appeals in the Ninth Circuit.

Levinson v. Greene, 296 Fed. 598:

[fol. 245] "Petitioners' position that the District Court for the Southern District of California had no power to make the order above described is not tenable. By the terms of the Bankruptcy Act of 1898, as amended June 25, 1910, section 2 (Com. St. 9586), the courts of bankruptcy are empowered to exercise 'ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy.' In Lazarus v. Prentice, 234 U. S. 263, the Supreme Court held that under this amended statute the Court exercising ancillary jurisdiction has authority 'to take summary proceedings for the restoration of the bankrupt's estate, which was in the custody of people having no right to it, in order that the same might be turned over to the bankruptcy court having jurisdiction for administration.' The power that may be exercised by the ancillary court to take possession of property rests on the interest in the property of the person or estate in whose right the proceeding is carried on, *and it follows that what this interest may be cannot be ascertained without determining conflicting interest that may be claimed by others in the property.*" (Italic type ours.) (Fidelity Trust Co. v. Gaskell, 195 Fed. 865, 115 C. C. A. 527; Emerson v. Castor, 236 Fed. 29, 149 C. C. A. 239.)

VII

The Court erred in dismissing the appeal and allowing the petition to revise.

In this case the record shows that the District Court sustained the

[fol. 246] jurisdiction of the District Court through its Special Master and passed on the merits of the case.

Weidhorn v. Levy, 253 U. S. 268.

A decision of a bankruptcy court that the Referee had no jurisdiction of a bill filed by the trustee to avoid certain transfers as in fraud of creditors is reviewable in the Circuit Court of Appeals by petition to revise under the Bankruptcy Act (24b), although had the District Court sustained the jurisdiction and passed on the merits the exclusive remedy would have been by appeal under 24a, as the Court thereby would have determined a controversy arising in bankruptcy proceedings. (First Syllabus.)

In this case the record shows that the District Court sustained the jurisdiction and passed on the merits.

VIII

This is not a proceeding to recover property transferred by the bankrupt, but to recover property the title to which never passed from the bankrupt, but which is held for the bankrupt. This was the ground upon which the District Court sustained the jurisdiction, and this fact was found upon the merits.

The property, therefore, was at all times in the constructive possession of the bankruptcy court through its trustee.

In Weidhorn v. Levy, 253 U. S. 268, the Supreme Court holding that if property is in the possession of one having an adverse claim and not representing the bankrupt, the trustee cannot recover it in the bankruptcy proceeding unless the bankruptcy court had posses-[fol. 247] sion (which it now appears may be actual or constructive). "Thus, if the property were in the custody of the bankruptcy court or its officer, any controversy raised by an adverse claimant setting up a title to or lien upon it might be determined on summary proceedings in the bankruptcy court and would fall within the jurisdiction of the Referee."

In the present case the Special Master and the District Court found that title had never passed from the bankrupt, and, therefore, under the Taubel case it is and has always been in the constructive possession of the court of bankruptcy since adjudication.

The bankrutcy court, therefore, had jurisdiction to determine the the title.

There is no contention that the bankruptcy court may in a summary proceeding recover property fraudulently transferred, but it may determine whether property is or is not in the custody of the bankruptcy court, actual or constructive, and if it is held without title. If the title never passed from the bankrupt, if it was in effect stolen, then the constructive possession draws it within the summary jurisdiction.

It is respectfully submitted that the opinion should be withdrawn and such further proceedings had in this cause as to the Court may seem proper.

Respectfully submitted, Philip Kates, S. A. Mitchell, Attorneys for the Trustee.

[fol. 248] The undersigned counsel for the petitioner, George Harrison, trustee, hereby certify that we have read and considered the foregoing petition and that we are of opinion that the petition for rehearing is well founded in law and in fact and that in the interest of justice it should be granted.

S. A. Mitchell, Philip Kates.

[File endorsement omitted.]

[fol. 249] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—Filed July 9, 1924

The Petition for Rehearing filed herein by the Respondent is denied.

United States Circuit Court of Appeals

Petition for Stay of Proceedings—Filed July 18, 1924

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

The petition of George Harrison, Trustee, Appellant herein, respectfully represents:

(1) That on the ninth day of July, 1924, the opinion of the Court was filed overruling the petition of the Appellant for rehearing in the above entitled cause and for the withdrawal of the opinion heretofore filed in this cause affirming the decree of the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

(2) That your petitioner is advised by counsel that the opinion of this Court affirming said decree of the District Court is in conflict with decisions of the Supreme Court and Courts of Appeals of the United States and raises questions of broad general interest and importance which it is desirable that the Supreme Court of the United States be asked finally to pass upon.

(3) That the Acts of Congress and Rules of the Supreme Court [fol. 250] of the United States, in such causes made and provided, fix the time within which petitions for writs of certiorari may be filed in the Supreme Court of the United States at three (3) months; that it is provided by the Rules of the Supreme Court of the United States that the party making application for writ of certiorari shall, as a part thereof, furnish the court with a certified copy of the whole record and nine (9) uncertified copies of the record; that thirty (30) printed copies of the petition for writ of certiorari and brief in support thereof shall be filed and notice of the date of submission of the petition, together with copies of the petition and brief in sup-

port thereof, shall be served on counsel for the respondent at least two (2) weeks before the date of submission.

(4) That your ptitioner is prepared to perfect the record in this case and to file its petition for writ of certiorari in the Supreme Court of the United States on or before the ninth day of October, 1924.

(5) That your petitioner is advised that in order that the proceedings may remain in their present status pending the disposition on such a petition for writ of certiorari, a specific order of this Court is required to stay the issuing of the mandate.

Wherefore, Your petitioner prays this Court enter an order directing the Clerk of your Honorable Court to hold the mandate in this cause pending the filing of the aforesaid petition for a writ of certiorari in the Supreme Court of the United States until the ninth day of October, 1924, and that if said petition shall be filed in the Supreme Court of the United States on or before that day the mandate be further held until the Supreme Court of the United States shall act upon said petition for the writ of certiorari.

[fol.251] And your petitioner will ever pray.

George Harrison, Trustee, by Phillip Kates, Samuel A. Mitchell, His Counsel.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—July 21, 1924

Upon petition of the appellee and respondent herein for a stay of the proceedings pending an application to the Supreme Court of the United States for a writ of certiorari. It is ordered by this Court that the issuance of the mandate in cause No. 6403 and of a certified copy of the decree in cause No. 250, Original, to the said District Court, be, and the same is hereby stayed until October 22, 1924, unless said application for writ of certiorari shall have been sooner disposed of in said Supreme Court.

[fol. 252] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 12, 1924

To the Clerk of the above-named Court:

In preparing transcript of record for the Supreme Court of the United States on petition for writ of certiorari in the above entitled cause you will please omit therefrom the following:

Notice and Motion of Appellee to require Appellant to give new bond.

Response to motion of Trustee for order requiring additional surety on Supersedeas Bond.

Order referring to District Court for determination and report the matter of solvency or insolvency of sureties on Supersedeas Bond.

Report of Hon. R. L. Williams, U. S. District Judge.

Order requiring appellant to give new Supersedeas Bond.

Certificate of Clerk of the U. S. District Court, Eastern District of Oklahoma, that no bond has been filed in his office pursuant to order of the Circuit Court of Appeals of December 20, 1923.

[fol. 253] Cost Bond on Appeal filed in Circuit Court of Appeals February 9, 1924.

Phillip Kates, S. A. Mitchell, Counsel for Appellee.

Dated at St. Louis, Mo., Aug. 11, 1924.

[File endorsement omitted.]

[fol. 254] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the praecipe of counsel for appellee, in a certain cause in said Circuit Court of Appeals wherein Anna B. Chamberlin was Appellant and George Harrison, Trustee in Bankruptcy of the Western Rope and Manufacturing Company, a corporation, bankrupt, was Appellee, No. 6403, as full, true and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twelfth day of August, A. D. 1924.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal of United States Circuit Court of Appeals, Eighth Circuit.)

[fol. 255] SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed Oct. 27, 1924

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Eighth Circuit, and of the argument of counsel thereupon had, it is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1925

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt,
Petitioner,
vs.
ANNA B. CHAMBERLAIN,
Respondent.

No. 6[redacted]1

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

Dr. Lentz Law Printing Co., 415 North Eighth Street. Central 6971.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt,
Petitioner,
vs.
ANNA B. CHAMBERLAIN,
Respondent.

No.....

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

NOTICE.

To H. B. Martin, Counsel for the Above Respondent:

Please take notice that on Monday, the 6th day of October, A. D. 1924, at the opening of the court on said day, or as soon thereafter as counsel can be heard, the petitioner will submit a motion to the Supreme Court of the United States in its court room at the Capitol in Washington, D. C., upon a verified petition for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit in the

above-entitled cause in said petition and motion designated, a copy of which motion and petition for said writ of certiorari, with the brief in support thereof, are hereby delivered to you.

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

Receipt of copies of the foregoing notice, motion, petition for writ of certiorari, and brief in support thereof, is hereby acknowledged at Tulsa, Oklahoma, this the 26th day of August, 1924.

HENRY B. MARTIN,
Counsel for Respondent.

Tulsa, Okla.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt, Petitioner, vs. ANNA B. CHAMBERLAIN, Respondent.	No.....

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

MOTION.

Now comes George Harrison, Trustee in Bankruptcy of the Western Rope and Manufacturing Company, a corporation, bankrupt, by his counsel, and moves this Honorable Court that it shall, by certiorari or other proper process, directed to the Honorable, the Judges of the United States Circuit Court of Appeals of the Eighth Circuit, and require said Court to certify to this Court for its review and determination a certain cause in said Circuit Court of

Appeals lately pending, wherein the petitioner was appellee and the respondent was appellant, the same being No. 6403 on the docket of said Circuit Court of Appeals for the Eighth Circuit, and to that end the petitioner now tenders herewith its petition, together with a duly certified copy of the entire record of said cause in said Circuit Court of Appeals.

Dated Tulsa, Oklahoma, August 26, 1924.

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt,
Petitioner,

vs.

ANNA B. CHAMBERLAIN,
Respondent.

No.....

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

George Harrison, Trustee in Bankruptcy of the Western Rope and Manufacturing Company, a corporation, bankrupt, hereinafter referred to as Petitioner,

hereby prays for a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Eighth Circuit in allowing an appeal and in entering an order directing the United States District Court for the Eastern District of Oklahoma to set aside an order directing Anna B. Chamberlain, the respondent herein, to turn over to this petitioner, as Trustee in Bankruptcy, $10,000.00 in currency in her possession, as an asset of the bankrupt estate.

The Western Rope and Manufacturing Company, a corporation under the laws of Oklahoma, was adjudicated a bankrupt by the United States District Court for the Eastern District of Oklahoma, sitting in bankruptcy, on May 25th, 1921, and on August 31, 1921, Anna B. Chamberlain, the respondent, and Agnes Gessel (sometimes herein called Agnes Leftwich), her daughter, were made parties to the bankruptcy proceedings on the ground that they held certain assets of the bankrupt.

On September 14, 1921, an examination of these witnesses was taken, and these examinations were held from time to time until October 28, 1921. Among other things, it was disclosed that in 1917 Agnes Leftwich had, with a check of the Western Rope and Cordage Company (found by the District Court to

have been the same as the bankrupt, a reorganization having taken place) payable to the Central National Bank in Tulsa, purchased a cashier's check of that bank for $9,500.00, payable to her mother, Anna B. Chamberlain, the respondent. The money was deposited to the joint account of Agnes Leftwich and Anna B. Chamberlain in the First National Bank at Broken Arrow, Okla., and with the money a farm was purchased on October 2nd, 1917, in the name of Anna B. Chamberlain, but on October 16th of the same year this farm was conveyed by Anna B. Chamberlain to her daughter, Agnes Leftwich.

On March 13th, 1920, both Agnes Leftwich and Anna B. Chamberlain conveyed the farm to one G. F. Hanks, and the proceeds of that sale, in currency, is admitted to be in the possession of the respondent, and is the fund that the trustee (the petitioner herein) seeks to recover.

The petitioner filed a petition on November 12th, 1921, for an order directing the respondent to deliver the money to him after the hearings at which the facts were disclosed (Tr., p. 6). The matter was referred to the Referee in Bankruptcy, as a Special Master, to examine the bankruptcy record and report to the Court his findings of fact and conclusions of law. The order of reference was subsequently en-

larged at the request of the respondent to permit the introduction of other testimony.

A response was filed (Tr., p. 10) and a reply to the response (Tr., p. 13).

The Master found the facts as above stated and also that the claim of Anna B. Chamberlain was not a real, but only a colorable claim, and was based on fraud; that the title to the fund had never passed from the bankrupt, and that it was an asset of the estate which should be turned over to the trustee (Tr., p. 16).

The District Court found the facts as reported by the Master on March 14, 1923, and ordered the money delivered to the trustee (Tr., p. 218).

The respondent then prosecuted to the Circuit Court of Appeals for the Eighth Circuit an appeal and a petition to review. The petition to review was dismissed but the appeal was allowed on March 14, 1923 (Tr., p. 218) and the District Court directed to set aside its order. The opinion of the Circuit Court of Appeals appears in the transcript of the record at page 234. The petition for a rehearing (Tr., p. 238) was filed and denied on July 9, 1924.

The opinion and decision of the Circuit Court of Appeals for the Eighth Circuit is to the effect that

a bankruptcy court, in determining whether or not it has jurisdiction of property by summary process, should examine only the claim, and, if in the law there is no adverseness shown, such jurisdiction attached; but if in law there is adverseness, however fraudulent or fictitious the claim may be, the summary jurisdiction is at an end.

Questions Presented.

The specific questions raised by this application are:

I.

May the Court determine its jurisdiction to issue a summary order by examination of the facts as disclosed at the hearing in the bankruptcy matter, or is its jurisdiction determined simply by the legal effect of the allegation of one asserting ownership? The Court of Appeals, in this case, has held that the bankruptcy court is without power to make an order for the delivery of the assets when it appears that an assertion of ownership is made, not colorable on its face, no matter how fraudulent or fictitious such claim may be in fact.

II.

Is the summary jurisdiction of a court of bankruptcy destroyed by the mere assertion of an adverse claim by one to property, which assertion is contrary to the facts?

Your Petitioner believes that if it appears from the bankruptcy record that the claim is fictitious, it is a colorable claim within the meaning of the bankruptcy law whatever may be the contents of the paper claim presented, and the Circuit Court of Appeals was wrong in refusing so to hold.

See

Muller v. Nugent, 184 U. S. 1;
In re Uttenbogard, 295 Fed. 778;
Levinson v. Greene, 296 Fed. 598.

The Petitioner believes that the claim asserted by the respondent, as shown by this record, is not, under the laws of the State of Oklahoma, good, even as against a demurrer.

See

Indian Land & Trust Co. v. Robt. L. Owen, 63 Okla. 127;
Stellwegon v. Clum, 254 U. S. 605.

The Petitioner presents herewith, in accordance with the rules and practice, the transcript of the

record in the said United States Circuit Court of Appeals for the Eighth Circuit, and appends to this petition a short brief on the questions here involved.

The Petitioner believes that the aforesaid decree and judgment of the Circuit Court of Appeals is erroneous, and that this Court should require the said cause to be certified to it for its review and determination in accordance with the provisions of the Act of Congress in such cases made and provided.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court on a day certain, to be there designated, a full and complete transcript of the record of all the proceedings of the Circuit Court of Appeals in said cause therein, entitled George Harrison, trustee of the Western Rope and Manufacturing Company, a corporation, bankrupt, vs. Anna B. Chamberlain, to the end that said cause may be reviewed and determined by this Court as provided in Judicial Code, Section 240, and that the petitioner may have such other and further relief in the premises as to this Court may seem proper and in conformity with said act, and that said judgment of said Circuit Court of

Appeals in the said cause and every part thereof may be reversed by this Honorable Court.

And your petitioner will ever pray.

Dated at Tulsa, Oklahoma, August 26, 1924.

GEORGE HARRISON,
Trustee in Bankruptcy of the Western Rope and Manufacturing Company, Bankrupt.

By PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

State of Oklahoma, } ss.
County of Tulsa. }

Philip Kates, being duly sworn, deposes and says that he is one of the counsel for the petitioner herein, and that he prepared the foregoing petition, and that the allegations therein are true as he verily believes.

Philip Kates.

Subscribed and sworn to before me this 26th day of August, 1924.

(Seal) William R. Kerr,
Notary Public.

My commission expires Nov. 25, 1927.

I hereby certify that I have examined and read the foregoing petition for a writ of certiorari and that in my judgment such petition is well founded and should be granted by this Honorable Court, and that said petition is not filed for delay.

Philip Kates.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt, Petitioner, vs. ANNA B. CHAMBERLAIN, Respondent.	No.....

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF PETITIONER.

I.

The matter involved in this case is of very material importance to the administration of the Bankruptcy Act, and one upon which the courts of the United States, both district and circuit, are in hopeless conflict.

The point to be determined is, in the last analysis,

the meaning of the language in Muller v. Nugent, 184 U. S. 1, where this Court says:

> "But suppose that respondent had asserted that he had the right to possession by reason of a claim adverse to the bankrupt, the bankruptcy court had power to ascertain whether any basis for such a claim actually existed at the time of the filing of the petition (in bankruptcy)."

In the present case the Circuit Court has said that the bankruptcy court should examine only the claim, and if in law there is no adverseness shown, the summary jurisdiction attaches; but if in law there is adverseness, then, however fraudulent or fictitious the claim may be the summary jurisdiction is at an end.

Some of the circuits have so held, but others have taken the opposite view, and have held that the Court should examine the facts to see if the claim is made in good faith.

Indeed, it would appear that this division of opinion exists not only between the circuits, but between different benches in the Eighth Circuit.

At the time this present case was argued before Stone and Lewis, Circuit Judges, and Phillips, District Judge, another case was argued before Kenyon, Circuit Judge, and Trieber and Munger, District Judges (In re Uttenbogard, 295 Fed. 778).

In the latter case the Eighth Circuit, through Judge Treiber, said (page 781):

> "If there is any liability of the commission merchant, upon such a state of facts, he claiming in good faith to hold these sums adversely, he is beyond question subject to a plenary suit in a court of competent jurisdiction.
>
> "The District Court should have first passed on the jurisdiction of the referee to proceed summarily in order to determine whether there is reasonable ground to sustain the bank's claim that it is entitled to retain the money in controversy and that the adverse claim is made in good faith."

In the present case the District Court appointed the Referee its Special Master to examine the record to see if the claim was made in good faith; if in fact there was reasonable ground to sustain the claim of Anna B. Chamberlain. And the Referee determined that the claim was not made in good faith, but was made in flagrant fraud, and therefore there was no basis for the claim.

In many of the Circuit Courts of Appeal, and apparently, at least, in one bench of the Eighth Circuit, the question of the good faith of the claimant appears to be a test of jurisdiction. How is the good faith to be determined? From the facts or from a paper claim, which may, as in this case, contradict the facts

as shown on the record. If the Court may not examine the facts, then in all seriousness it is submitted that the only cases in which the summary jurisdiction could be sustained would be where, if there were bad faith, the claimant had no attorney and lacked common intelligence; or, if he had intelligence, he had sufficient good faith to show his bad faith. This is not said in a spirit of levity nor to turn a paradox, but because it seems the only way to state such a rule.

In the Ninth Circuit the precise question was passed upon in

In re Eilers Music House, 270 Fed. 915,

where the Circuit Court of Appeals adopted a Master's report, which said:

> "Before there is an ouster (of the summary jurisdiction) the claim must have such foundation in law and in fact as to make it appear that it exists, can be maintained, and is asserted in good faith."

In

Levinson v. Greene, 296 Fed. 598,

the Circuit Court of Appeals for the Ninth Circuit held:

> "The power that may be exercised (the summary jurisdiction) by the ancillary court to take

> possession of property rests on the interest in the property of the person or estate in whose right the proceeding is carried on, and it follows that what this interest may be cannot be ascertained without determining conflicting interests that may be claimed by others in the property."

It is believed that the decisions above cannot be reconciled with the opinion of the Court in the present case that:

> "In our judgment the meaning of that word (colorable) as used in that connection is that a claim alleged to be adverse is only colorably so when, admitting the facts to be as alleged by the claimant, there is, as a matter of law, no adverseness in the claim."

And

> "However improbable or even fraudulent this claim may be, yet that matter has no bearing upon determination of jurisdiction, but is pertinent only on the merits in the court properly having jurisdiction of the controversy."

Until the recent decision of this Court by Mr. Justice Brandeis, in Taubel Scott Kitzmiller Co. v. Fox, No. 188, October Term, 1923, it was the opinion of some of the circuits, especially the Eighth, that actual possession was necessary to the summary jurisdiction. In fact, in In re Rathman, 183 Fed. 913, Judge

Sanborn said that possession was the touchstone of summary jurisdiction.

But, under the rule in the Taubel case, the summary jurisdiction attaches to property in the constructive as well as in the actual possession of the trustee, and as the Court said in that case, the bankruptcy court has jurisdiction to determine if it has constructive possession.

How may this be determined?

In some of the circuits, if the claim is found to be made in bad faith and founded in fraud, it is colorable within the meaning of the law. In this case the rule is announced that it is colorable only if the claimant admits it to be so, but if any allegations are made by the claimant, which, if uncontradicted, would support the claim as a matter of law, the summary jurisdiction is at an end. "However," in the language of the Court in its opinion in this case, "improbable or even fraudulent this claim may be."

In the present case the lower court found every fact necessary to sustain the summary jurisdiction:

> That the fund was an asset of the bankrupt estate.
>
> That the title had never passed from the bankrupt.
>
> That the claim set up was colorable and fraudulent and not real.
>
> That the fund was held for the bankrupt.

This case presents squarely for determination the question:

> Is the summary jurisdiction of the bankruptcy court to be determined by the facts as found by the Court, or solely by the admissions of the claimant?

The Circuit Court of Appeals does not disturb the findings as made by the District Court; so, for the purpose of this petition, those findings stand.

The decision turns upon the fact that there was testimony "that a Mrs. Gessel, who was a stockholder in a corporation which was the immediate predecessor of the bankrupt, was given money from the assets of that company, with the permission of the only other stockholder with herself in that company, at a time when such company was entirely solvent; the sums taken might have been declared as dividends; that this money was given to her mother in payment of indebtedness due petitioner from Mrs. Gessel." The Court then says: "However improbable or even fraudulent this claim may be, yet that matter has no bearing upon determination of jurisdiction * * *."

The Master found, and the record shows, not that the money was paid to Anna B. Chamberlain for indebtedness, but was deposited in a bank to the joint

account of Anna B. Chamberlain and Agnes Leftwich; that immediately a farm was bought with it in the name of Anna B. Chamberlain, and she immediately conveyed that farm to Agnes Leftwich.

Under the circumstances, the title to the money never having passed to Agnes Leftwich, certainly her mother could not assert title.

This Court has held in Stellwegon v. Clum, 254 U. S. 605, that a trustee in bankruptcy, in collecting the assets of a bankrupt, is given the benefit of the state law as to ownership, though this may lead to different results in the various states.

The Bankruptcy Act of 1908, as amended, expressly gives to the trustee the status of a judgment creditor (Amendment 1910, Sec. 47A [2]).

See Remington (3d. Ed.), Sec. 1507.

The law in Oklahoma is that a diversion of funds by an officer of a corporation, without a corporate act, does not pass the title of the fund so diverted from the corporation, and that a judgment creditor may levy an execution upon such property when found in the hands of a third person, whether such creditor was so at the time of the diversion of the fund or became so subsequently. This question is fully discussed by the Supreme Court of Oklahoma in Indian Land and Trust Company against Robert L. Owen,

63 Okla. 127. Even in the absence of fraud, the giving by one officer to another an asset of a corporation does not pass title. Of course, if the specific asset were not located and a general suit for accounting were necessary, this could not be the subject of the summary jurisdiction. There is no controversy about the fact that the $10,000.00 in currency in the possession of the respondent is this same asset.

If this is the property of the corporation, a judgment creditor in Oklahoma could levy an execution on it in the hands of the respondent.

The trustee is, by the express provisions of the Bankruptcy Act, vested with the title of all property of the bankrupt upon which a judgment creditor might levy an execution. (See 70a [5]; In re Gracewith, 115 Fed. 87 [C. C. A., 4th Circuit].)

So, without going into the question of embezzlement or fraud as an element of jurisdiction, and admitting for the purpose of this statement that one officer of the corporation took a specific fund from the corporate treasury without corporate authority and delivered it to another officer, under the law in Oklahoma the title never passed, and if the specific fund can be located a judgment creditor of a corporation may levy an execution upon that fund. And a trustee in bankruptcy, having the status of a judgment creditor, may recover it in a summary proceeding,

for the basis of the right is that it is a specifically located asset, title to which is in the bankrupt.

It may be that the apparent conflict between the circuits can be reconciled by the statement of the rule thus:

If the bankruptcy court finds from the record a state of facts which, in a plenary suit, would justify an instructed verdict or an instruction to a jury that the claim was fraudulent and fictitious, then the summary jurisdiction attaches. In this case the Court has so found.

To sustain the doctrine that a trustee must proceed by a plenary suit, after establishing in the bankruptcy hearing that a claim is fraudulent and fictitious, it is necessary to lay down the rule that a court would not set aside a verdict of a jury which was clearly founded upon a fraudulent and fictitious claim. If, upon a given state of facts, the Court would set aside a verdict against the trustee, then it should direct a verdict in his favor. And if, upon the facts as found, the Court in a plenary suit should direct a verdict, it seems reasonable that the summary jurisdiction is properly invoked.

We cannot conceive that in the administration of the bankruptcy law the trustee, having established that the claim of one adversely asserting a right is

patently and flagrantly fraudulent, colorable and fictitious, should be deprived of the summary remedy which the Bankruptcy Act has provided.

It is respectfully submitted that the questions herein presented are of sufficient importance to warrant a review and determination by this Honorable Court.

Respectfully submitted,

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioners.

FILED
NOV 21 1925
WM. R. STANSBURY
CLERK

No. 168.

In the Supreme Court of the United States.

October Term, 1925

GEORGE HARRISON, TRUSTEE IN BANKRUPTCY, OF WESTERN ROPE MANUFACTURING COMPANY, INCORPORATED, BANKRUPT, PETITIONER,

VERSUS

ANNA B. CHAMBERLAIN, RESPONDENT.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *of* PETITIONER.

PHILIP KATES,
ATTORNEY FOR PETITIONER.
S. A. Mitchell

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1925

No. 168

GEORGE HARRISON, TRUSTEE IN BANKRUPTCY, OF WESTERN ROPE MANUFACTURING COMPANY, INCORPORATED, BANKRUPT, PETITIONER,

versus

ANNA B. CHAMBERLAIN, RESPONDENT.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *of* PETITIONER.

The opinion below is not reported. It is found on page 225 of the Record.

The jurisdiction of the bankruptcy court arises under section 2, Bankruptcy Act of 1898.

"Courts of Bankruptcy * * * are hereby invested * * * with such jurisdiction as will enable them to * * * (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary to the complete determination of a matter in controversy; (7)

cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto except as herein otherwise provided. * * * nothing in this section shall be construed to deprive a court of bankruptcy of any power it would possess were certain powers not here enumerated."

The question involved is:

May a court of bankruptcy, in a summary proceeding, find from the evidence in the bankruptcy case that the assertion of title by a person in possession of property claimed by the trustee, is colorable and fraudulent, and order its restoration to the trustee; or is the summary jurisdiction to be denied unless such assertion on its face is without foundation in law?

Statement of the Case.

The Western Rope and Manufacturing Company, a corporation, was adjudicated a bankrupt by the United States District Court for the Eastern District of Oklahoma, sitting in bankruptcy, on May 25, 1921 (R. 1); and on August 31, 1921, Anna B. Chamberlain, the respondent, and Agnes Gessel (sometimes herein called Agnes Leftwich), her daughter, were made parties to the bankruptcy proceedings, as holding certain assets of the bankrupt, and necessary to the complete determination of a matter in controversy (R. 3). Agnes Gessel had been an officer and director of the company during all the time involved in these proceedings (R. 17). B. F. Gessel owned all the stock except one share, which was held by Agnes Gessel (R. 14).

On September 14, 1921, an examination of these parties was begun, and held from time to time until October 23,

1921. Among other things, it was disclosed that in 1917, fraudulently and secretly, Agnes Gessel had, with a check of the Western Rope and Cordage Company (found by the District Court to have been the same as the bankrupt, a reorganization having taken place), payable to the Central National Bank of Tulsa, purchased a cashier's check of that bank for $9,500.00, payable to her mother, Anna B. Chamberlain, the respondent. This money was deposited to the joint account of Agnes Leftwich and Anna B. Chamberlain in the First National Bank at Broken Arrow, Oklahoma, and a farm was purchased with this money on October 2nd, 1917, the title being taken in the name of Anna B. Chamberlain; but two weeks later, on October 16th, 1917, the title was transferred by respondent to her daughter, Agnes Leftwich (R. 13, Master's report).

On March 13th, 1920, Agnes Leftwich (her mother, the respondent, joining in the deed), conveyed the farm to one G. F. Hanks, and the proceeds of that sale, converted into currency, are admitted to be in the possession of the respondent and is the fund that the trustee seeks to recover in this proceeding (R. 13, Master's report).

The trustee filed a petition in the bankruptcy case on November 12th, 1921, for an order directing the respondent to deliver the money to him (R. 6), for the reason that her claim was fictitious and colorable. The matter was referred to the referee in bankruptcy, as a special master, to examine the bankruptcy record and report to the court his findings of fact and conclusions of law (R. 12). The order of reference was subsequently enlarged, to permit the introduction of other testimony (R. 13).

A response was filed (R. 9) and a reply to the response (R. 11), and additional testimony taken.

The master found the facts as above stated, and also found that the claim of Anna B. Chamberlain is not real, but is only a colorable claim, based on fraud; that the title to the fund has never passed from the bankrupt, and that it is an asset of the estate, in the possession of respondent, which should be turned over to the trustee (R. 13).

The District Court found the facts as reported by the master and ordered the money delivered to the trustee (R. 213).

The respondent then prosecuted to the Circuit Court of Appeals for the Eighth Circuit, an appeal and a petition to review. The petition to review was dismissed, but the appeal was allowed (R. 225), and the District Court directed to set aside its order (R. 226).

The opinion of the Circuit Court of Appeals appears in the record at page 225.

The petition for a rehearing was filed (R. 226) and denied on July 9th, 1924 (R. 232).

A petition for *certiorari* was filed in this court in due time and was allowed October 27, 1924.

SPECIFICATIONS *of* ERROR.

The Circuit Court of Appeals erred:

1. In considering and allowing the appeal.

As the jurisdiction of the District Court was involved, the only method of review was by petition to revise.

2. In its definition of the word "colorable" (as used in Mueller vs. Nugent, 184 U. S. 1), when it said:

> "In our judgment the meaning of that word when used in this connection, that a claim alleged to be adverse is only colorably so when admitting the facts as alleged by the plaintiffs, there is as a matter of law no adverseness in the claim."

3. In limiting the summary jurisdiction of the bankruptcy court to cases in which a claim set up by one holding an asset of the bankrupt is without merit only upon the face of the claim.

4. In denying the jurisdiction of the bankruptcy court to proceed summarily, where the claim of title set up by one holding property of the bankrupt is improbable or fraudulent.

5. In directing the District Court to set aside its order requiring the respondent to return to the trustee the asset involved in this proceeding.

6. In refusing to affirm the order of the District Court.

ARGUMENT.

I.

The findings of the referee having been confirmed by the District Court conclude the facts.

The referee found that this is an asset of the bankrupt, held by the respondent only by a fraudulent and colorable claim of title (R. 13). These findings have been approved by the District Court, and have not and should not be disturbed.

Wooten vs. Ownbey, 265 Fed. 91 (97) (8th C. C. A.):

> "While the view of this court might be in favor of a different conclusion from the testimony of Ownbey, the case is one where master and trial court have concurred in a finding of fact upon conflicting evidence, and that finding should be confirmed by this court."

Nichols vs. Elkens, 225 Fed. 689 (692) (8th C. C. A.):

> "The rule is firmly established by the Supreme Court and has been repeatedly applied by this court that when the chancellor has considered conflicting evidence, made his findings and a decree thereon, they will be held by appellate courts to be presumably correct, and unless an obvious error had intervened in the application of the law, or some serious mistake has been made in the consideration of the evidence, the findings must stand."

Remington, 3rd ed., 3639:

> "Upon review, the referee's order is to have the presumption in its favor, also his findings of fact are to have the same presumption."

In this case the findings of fact are expressly approved by the District Court and were not disturbed by the Circuit Court of Appeals, the case being decided solely upon jurisdictional grounds.

This court will not look beyond the findings of the master, that the claim of title is colorable, fictitious and fraudulent. But, an examination of the record at every point shows that no other findings could be made. The audit of the books made by Mr. Craig, as shown by his testimony (R. 55-77, and 156-165), taken in connection with the testimony of Agnes Gessel and respondent, and B. M. Gessel discloses that the respondent and her daughter secured from the funds of the bankrupt an enormous sum of money from 1917 up to the time of bankruptcy, and that it was the taking of this money which rendered the company insolvent. The method of operation was this: The bankrupt was doing business with the banks of Tulsa, borrowing money and taking up drafts for machinery and supplies. Therefore, any payment to a bank would excite no suspicion on the part of Mr. Gessel. The entire bookkeeping of the company and the management of the accounts were in charge of Agnes Leftwich, the daughter of the respondent (R. 169). Mr. Gessel spent most of his time in the field, selling supplies, and only saw from time to time a statement prepared by Agnes Leftwich, showing the sums received and paid out (R. 42).

These checks by which the respondent and her daughter Agnes Gessel secured the money were payable to some bank with which the company was doing business.

When a statement was laid upon the desk of Mr. Gessel, it merely showed checks drawn to various banks, as the company was at all times taking up drafts,

he paid no attention to the amounts, because, as he testified, he considered they were simply checks to take up machinery and supplies, which were shipped with bill of lading attached. The company was making an enormous amount of money and he had absolute confidence in Agnes Leftwich, and he at no time checked over the books. But instead of being used for the purpose of taking up notes and drafts at the bank, the money went into the hands of the respondent and her daughter Agnes Gessel (R. 156-159; 42, 43, 44).

But without the knowledge of B. M. Gessel, Agnes Leftwich would charge these amounts into B. M. Gessel's personal account (R. 44). After the bankruptcy, when the books were audited, these withdrawals appeared and a large amount has been directly traced to the respondent and Agnes Gessel. The sum of $510,066.53 was charged into B. M. Gessel's account (R. 59).

The bankruptcy court had before it the witnesses and upon the testimony could have made no other findings than it did.

II.

The bankruptcy court had jurisdiction to determine the facts.

In the report of the special master is this finding:

> "The respondent has entered special appearance at all the hearings had herein, and has demurred on the ground that the bankruptcy court has no jurisdiction to make her a party and proceed summarily, but has answered fully to the petition, examined the witnesses introduced by the trustee, and moved for a con-

tinuance of the hearing until she could have order of reference enlarged to hear everything on behalf of defendant." (R. 13.)

After the case had been referred by Judge WILLIAMS to the special master to report on the bankruptcy record, the following order was entered by Judge DYER, sitting in the Eastern District of Oklahoma, for Judge WILLIAMS (R. 13):

> "Now on this 20th day of February, 1922, it being made to appear to the court that the order of reference heretofore made in said cause referring to the referee in bankruptcy the petition of the trustee, George Harrison, for a summary order against Anna B. Chamberlain to pay into court $10,000.00, is too limited in its scope;
>
> "It is therefore ordered that the said matter be and is hereby referred to the Honorable A. F. McGarr, referee in bankruptcy, to take the evidence that may be offered for and against said petitioner and to report to the court his findings of fact and conclusions of law thereon.
>
> "DAVID P. DYER, *Judge.*"

The entire question of the effect of the plea to the jurisdiction of the District Court, either to make the respondent a party to the bankruptcy proceedings or to entertain the application for a summary order for the return of $10,000.00 in currency, held by the respondent, is therefore disposed of by the action of the respondent, in securing an enlargement of the order of reference to permit her to introduce testimony in addition to that contained in the bankruptcy record.

This is a proceeding under section 25, Act, 1898, to reduce to possession a specific, definitely traced asset, the title

to which never passed from the bankrupt, and is not, in any sense, a controversy with an adverse claimant to set aside a transfer, or to revest a title which has passed into a third person.

Agnes Leftwich, in the first instance, wrongfully took this money from the bankrupt. By her act no title could vest in her. The corporation did not transfer it to her. As will be shown hereafter, under the law in Oklahoma, the act of an officer in diverting funds cannot vest the title in her or her grantee.

—Indian Land & Trust Co. vs. Owen, 63 Okl. 127.

And under the decision of this court in Stellwagon vs. Clum, 254 U. S. 605, the rights of a trustee in bankruptcy are determined by state laws, even though to that extent the bankruptcy administration may not be uniform throughout the several states.

And where the path is clear and certain, and the diverted asset is traced without question, there is no reason to compel a trustee in bankruptcy to resort to a proceeding in some other tribunal than the bankruptcy court itself for the restoration of the asset.

The officers of a corporation are trustees of its funds for the benefit of its creditors, its stockholders or a trustee in bankruptcy. If a specific asset is traced into the hands of an officer and then traced into the hands of a person who is not a bona fide holder, it would seem that she should be compelled to deliver back the property which she wrongfully holds.

This court, in the case of Central National Bank of Baltimore vs. Connecticut Mutual Life Insurance Company,

104 U. S. 54, reviews the English and American cases upon the law of trust. In that case, Mr. Justice MATHEWS adopted this language:

> "So long as the trust property can be traced and followed into other property in which it has been converted, that remains subject to the trust."

In Ury vs. Van Every, 188 Pac. 985, the Supreme Court of California, in passing upon a demurrer to a petition by the trustee in bankruptcy to recover certain property, quoted from 7 Corpus Juris, 118, as follows:

> "Where one for whom property is held in trust becomes bankrupt, his entire interest in the trust estate passes to the trustee in bankruptcy, and such ownership draws with it the right of possession, in so far as such interest is capable of possession."

And also quotes from Brandenburg on Bankruptcy, (4th ed.) 853:

> "Any property, in which there is a secret trust for the bankrupt's benefit, no matter how much covered up, passes to the trustee."

In support of the text, Corpus Juris cites Hammond vs. Whitredge, 204 U. S. 538, in which this court passed upon a decision of the Supreme Judicial Court of Massachusetts, to the effect that an interest of a *cestui que* trust passes to his assignees in bankruptcy. The Massachusetts court said:

> "By virtue of the assignment in bankruptcy, the complete ownership in this incorporeal interest in this personal property became vested in the assignees, and the ownership drew after it possession so far as the interest here in question (an incorporeal interest, because an interest in remainder) is capable of possession."

The trustee in bankruptcy, in the present case, upon his appointment and qualification, became vested with the possession, at least constructively, of this asset. Whether it was in the form in which it was first taken, or in the form of real estate, or in the form of a mortgage, or in the form of currency, is of no consequence. For this particular asset has been traced into the possession of the respondent; as to that fact there is no question. The sole question in the case is, in the language of the Circuit Court of Appeals for the Eighth Circuit, in *In re* Uttenbogard, 295 Fed. 778 (781):

> "Whether there is reasonable ground to sustain the respondent's claim that she is entitled to retain the money in controversy and that the adverse claim is made in good faith."

The master found that the claim had no existence in fact; the District Court approved this finding; the Circuit Court of Appeals did not disturb the findings. But that court decided that there was no jurisdiction in the bankruptcy court to proceed summarily, because the allegation of the claimant, if not contradicted, would support a claim in law.

In passing upon the question of the good faith of the respondent in asserting this claim, the lower court had before it the entire bankruptcy record, and in addition the testimony offered by the respondent under her enlarged order of reference. Her claim of title is based upon allegations which are contradicted at every point by the facts as found. She says that her daughter owed her money and that this was in payment of the debt (R. 10). The court found that it was secretly and fraudulently withdrawn and deposited to the joint account of herself and daughter (R. 13). She says

that this fund was mingled with her own and that she cannot distinguish it (R. 11). The court found that this particular money was used to purchase a farm, the title to which immediately after its purchase was transferred to Agnes Leftwich, and that it stayed in the name of Agnes Leftwich until it was sold, shortly before the bankruptcy (R. 13).

Upon those findings, it is submitted that to require the trustee to leave the bankruptcy court; to file a general suit in some other tribunal, and to litigate a question already fully heard and determined, would be subversive of the entire purpose of the bankruptcy act. Where the title to property has never passed from the bankrupt, the restoration of possession is a part of the administration of the estate, and

> "Creditors are entitled to have this authority exercised, and may justly complain when an important part of the administration is sought to be effected by a slower and less appropriate process of a plenary suit in equity in another court."
>
> —U. S. Fidelity & Guar. Co. vs. Bray, 225 U. S. 205.

Under the bankruptcy act and under the decisions of this court, the exercise of the summary jurisdiction is not a matter of discretion for the bankruptcy court. It is, as this court states in Miller vs. Nugent, 184 U. S. 1,

> "A matter of duty,"

and it is a duty which this court has said in U. S. Fidelity & Guaranty Co. vs. Bray, 225 U. S. 205,

> "cannot be surrendered."

In Mueller vs. Nugent, 184 U. S. 1, this court said:

> "But suppose that respondent had asserted that she had the right of possession by reason of a claim

adverse to the bankrupt, the bankruptcy court has the power to ascertain whether any basis for such a claim actually existed at the time of filing the petition."

From that statement of the law, there have grown up three lines of decisions, which may be grouped as follows:

First. The view that actual possession by a trustee in bankruptcy is essential to the exercise of summary jurisdiction to determine title. In support of this line of decisions is cited the opinion of Judge SANBORN, *In re* Rathman, 183 Fed. 913 (8th C. C. A.), in which he said that possession was the "touchstone" of the summary jurisdiction. The Rathman case has been cited by courts and by text books as supporting the doctrine that actual possession by a trustee is necessary in all cases. But, in the Rathman case, the denial of the summary jurisdiction was based upon the finding that the claim of the holder of the property was neither frivolous nor colorable, but substantial and made in good faith.

But the necessity of actual possession has been denied by this court in the case of Taubel vs. Fox, 264 U. S. 426, and in the recent case of May vs. Henderson, No. 126, October term, 1924.

Second. The view that the summary jurisdiction may be exercised upon the filing of a petition by the trustee alleging that a third person holds property for the bankrupt, even though the trustee has not possession of the property; but that this summary jurisdiction is ended if the respondent presents a claim to ownership of the property, which would be good against a demurrer.

This doctrine is announced by Judge STONE (R. 225) thus: That no matter how fictitious or improbable the

claim of the respondent may be, if she sets up any facts, which, if uncontradicted, might show a title in her, then the jurisdiction of the bankruptcy court is ended.

Third. The view that where a trustee asserts ownership of a specific asset and the title is claimed by a third person in actual possession, the bankruptcy court has the right and is charged with the duty of making an investigation to determine whether the claim of the third person is made in good faith and could probably be sustained. If the bankruptcy court determines that the claim is not made in good faith, is fraudulent and colorable, then it has the constructive possession and should order the asset delivered to the trustee. This doctrine we believe to be sound and to be the doctrine laid down by this court in

Mueller vs. Nugent, 184 U. S. 1;
Taubel, etc., vs. Fox, 264 U. S. 426;
May vs. Henderson, 126, October Term 1924.

The most recent case upon this subject is that of Head vs. Brainard, 5 Fed. (2), 289, in which a rehearing was denied by the Ninth Circuit Court of Appeals on May 25, 1925. In that case certain property was held in the possession of Head and others claiming title. The issue was whether or not defendants were holding under a pretense of color of title and in bad faith. The respondents asserted that they held the property adversely under claim of title. The court referred the matter to a special master to take testimony to determine whether or not they were holding in good faith or under colorable title. The master found that Head and others held in bad faith, under mere pretense, and that title was in the bankrupt.

In passing upon this question, the Circuit Court of Appeals said:

> "In our opinion the court by its order of confirmation of the master's report in the ancillary bankruptcy proceedings adjudged that the bankrupt estate had title to the property in question, and that the claimants thereto, who were these plaintiffs in error, did not hold the property by right or assertion of right made in good faith. There was a challenge by the respondent in the ancillary proceedings to the jurisdiction, but that step did not oust the court of jurisdiction, or do more than to impose upon it the duty to cite claimants to show cause why they should not yield possession of the property to the trustee, and to inquire whether the claim of title was genuine and adverse and made in good faith. Cohen vs. Hessel, (C. C. A.) 278 Fed. 929. Repeated decisions have recognized the obvious proposition that before jurisdiction of the District Court can be ousted by mere assertion of title by a claimant, there must be a hearing and a decision whether the claim interposed is in good faith and real, or is without actual merit or legal foundation. If the decision is the one way, the bankruptcy court should decline to try the issue summarily, but if it be decided that the claim is wholly without merit and not filed in good faith, then the court has power to make an order requiring the wrongful holder to surrender to the trustee and to direct administration. *In re* Eilers Music House, (C. C. A.) 270 Fed. 915 (917), *certiorari* denied, 257 U. S. 613, 646."

In Head vs. Brainard, the court cites the recent case of Taubel vs. Fox, 264 U. S. 426, and states:

> "The court (the Supreme Court of the United States) held that under the Act of 1898 the bankruptcy court had power to adjudicate, without consent, con-

troversies, concerning the title arising under either sections 67e, 60b or 70e (Comp. St. 9651, 9644, 9654), where the property was in possession of the court, but that while possession was essential to jurisdiction, it need not be actual, but was sufficient if constructive, and in giving several instances wherein the court might exercise jurisdiction, Justice BRANDEIS includes those 'where the property is held by one who makes the claim, but the claim is colorable only.' The court also held that as the bankruptcy court must have power to determine whether it has possession, actual or constructive, 'it may conclude, where it lacks actual possession, that the physical possession held by some other persons is of such a nature that the property is constructively within the possession of the court'."

Citing:

Myers vs. International Trust Co., 263 U. S. 64.

This doctrine is supported also by very many cases in the various District and Circuit Courts of Appeal of the United States:

In re Looschen Piano Co., 261 Fed. 93 (N. J.), second syllabus:

"Where a trustee in bankruptcy applies for an order requiring third parties to turn over property in their possession, and bases his application upon the ground that the property in question belongs to the bankrupt and is held without color of right, the referee is bound to take jurisdiction of the matter, and under that power to summarily determine the question, for the bankruptcy court is clothed with power to cause the bankrupt's estate to be collected and to determine controversies in relation thereto, and unless the claim of the trustees seems of doubtful validity, a plenary suit need not be required."

Gray vs. Gudger, (C. C. A., 5th Cir.) 260 Fed. 931:

"Where the bankruptcy court ordered sold an unscheduled life estate, title to which stood in the name of the bankrupt, and it was claimed by a son of the bankrupt, who asserted that the bankrupt had sold it to him, *held*, that the bankruptcy court has jurisdiction to summarily determine the controversy between the purchasers and the son."

Kaigler vs. Gibson, (Ga.) 264 Fed. 240:

"Where the trustee asserts two claims, one of which is cognizable by a bankruptcy court and one of which is not, the bankruptcy court may make a preliminary inquiry into the merits of the case to see if it has jurisdiction to act summarily."

In re Rockford Produce & Sales Co., (C. C. A., 7th Cir., 1921) 275 Fed. 811:

"Under amendment of June 25th, 1915, the Fedtion by a trustee in bankruptcy charging payments by eral Court had jurisdiction to try the issues on a petithe bankrupt constituted preference, and requesting an order requiring creditor to show cause why money should not be turned over to the trustee."

In re Ellis Bros. Printing Co., (N. Y.) 156 Fed. 430:

"The mere assertion of a claim of title to property adverse to a trustee in bankruptcy, even with an intention to protect it by the usual process of law, will not preclude the bankruptcy court from exercising its power to proceed summarily; but it is only when the evidence indicates that the asserted claim is not false or fraudulent that such court is deprived of jurisdiction. If it should appear from the proof that the respondent Strong refuses to surrender the money collected by him to the trustee simply on the ground that the title to the

same is conclusively evidenced by his possession of it, or *if the claim is unreal or colorable then it is the duty of the court to direct the payment to the trustee.*" (Italics ours.)

In re Holbrook Shoe & Leather Co., 165 Fed. 973:

"Where a bankrupt's trustee filed a petition for a summary order directing a corporation deemed to be a mere agent of the bankrupt to surrender possession of property which the trustee claimed belonged to the bankrupt, but which the corporation *claimed in its own right, it was the duty of the referee to hear the testimony in order to determine whether the corporation's claim was real or merely colorable.* (Italics ours.) And if the referee finds that the claim is colorable only and without any *actual merit,* or legal foundation, he should order it surrendered to the trustee."

Levinson vs. Green, 296 Fed. 598 (9 C. C. A.):

"The power that may be exercised (the summary jurisdiction) by the ancillary court to take possession of property rests on the interest in the property of the person or estate in whose right the proceeding is carried on, and it follows that what this interest may be cannot be ascertained without determining *conflicting* interests that may be claimed by *others* in the property."

In re Friedman, et al., (C. C. A., 2nd Cir.) 161 Fed. 260:

"The referee has power in summary proceedings to order third persons claiming the property in their own right to turn it over to the trustee."

In re Norris, (N. Y.) 177 Fed. 598:

"The bankruptcy court has power to ascertain whether an adverse claim to the property of the bank-

rupt made by a third person, *in possession is in fact* well founded or is fictitious or colorable."

In re Franklin Suit & Shirt Co., (Pa.) 197 Fed. 591:

"A court of bankruptcy may determine an adverse claim summarily even before adjudication, and if the holder is without any real claim of ownership in himself to order it turned over forthwith."

In re Iron Clad Mfg. Co., (N. Y.) 194 Fed. 906:

"*If the fraud is indisputable on the record*, the bankruptcy court may summarily order the property turned over. Facts in this case held to show such lack of good faith and colorability as to justify a summary order."

In re Resnek Shapiro & Co., 246 Fed. 879:

"Where a claim of a third person is founded on patent and flagrant fraud, the bankruptcy court may order property turned over to trustee."

In re Eilers Music House, (9th Cir., C. C. A.) 270 Fed. 915, adopting the report of the special master, which said:

"The challenge to the jurisdiction of this court to dispose of the controversy in a summary proceeding is overcome by the conclusion that these assets are a part of the general estate of the music house and merely held by the Oregon Eilers as an agent or branch thereof. The jurisdiction of this court is not ousted by the circumstances that an adverse claim has been set up. Before there is an ouster the claim must have such foundation *in law and in fact* as to make it appear to the court *highly probable that it exists, can be maintained and is asserted in good faith.* (Remington on Bankruptcy, 1654½; Sweer vs. Brown, 130 Fed. 328,

64 C. C. A. 574; *In re* Holbrook Shoe & Leather Co., 165 Fed. 973.)"

In re Uttenbogard, 295 Fed. 778 (781) (8th C. C. A.):

> "The District Court should have first passed on the jurisdiction of the referee to proceed summarily in order to determine whether there is reasonable ground to sustain the bank's claim that it is entitled to retain the money in controversy, *and that the adverse claim is made in good faith.*"

This court has recently said, in the case of May vs. Henderson, No. 126, October term, 1924, that courts of bankruptcy will not permit themselves to be ousted of jurisdiction by the mere assertion of an adverse claim, and that the court has jurisdiction to inquire into the claim for the purpose of ascertaining whether the summary remedy is an appropriate one within the principles of that decision.

What then is the limit of the inquiry of a court sitting in bankruptcy to determine whether a summary application is or is not the proper remedy by which to restore to a trustee property which he claims to be an asset of the bankrupt estate?

The object of the summary jurisdiction of the bankruptcy court is to collect assets of the bankrupt estate. It is obvious that if a third person takes something from the bankrupt and that thing taken can be located, the bankruptcy court must have power and must be charged with the duty of determining in the first instance whether the claim by the person in possession is of such a nature that the trustee should recover possession of the asset through the bankruptcy court, or should be obligated to file a suit in another tribunal.

It is probable that much of the confusion in the law has arisen from the fact that the summary jurisdiction has been invoked to secure a personal judgment against an adverse claimant. Obviously, the only order that should be entered as the result of a summary proceeding would be for the claimant to deliver to the trustee a specific thing.

In the present case, the specific thing is money, converted first into real estate; then into mortgages, and finally into currency. The money was taken from the company by Agnes Leftwich (Gessel). There is no controversy about the fact that it was turned over to the respondent. There is no controversy about the fact that the respondent still has the money in her possession, and that now, instead of being in the form of a cashier's check, or a bank credit, or land or a mortgage, it is in the form of currency of the United States. Even if it were now in the form of real estate, it would be subject to the summary jurisdiction.

In *In re* Logan, 196 Fed. 678, the referee found that the real estate in question was in the name of a third party who was not a party to the bankruptcy case; that this party held the legal title to real estate which had formerly stood in the name of the bankrupt. It was further held in that case that the referee had jurisdiction to make the necessary findings, and there being evidence to sustain the same, had authority *to make an order requiring the respondents to convey the property, both real and personal, to the trustee and to surrender possession to him.*

Upon the point as to whether or not the property, being real estate, came within the summary jurisdiction, the court said:

"Can a referee in bankruptcy make an order in effect declaring a deed of real estate made and delivered more than four months prior to the filing of a petition in bankruptcy by a party other than a bankrupt to a person other than the bankrupt fradulent and void, and directing the person holding the title under such deed for the bankrupt to transfer such real estate by deed to the trustee? *More is to be done so far as the real estate is in question than to deliver possession. A deed must be executed and delivered. The property has not come into the physical possession of the court or trustee. Both court and trustee are confronted by Grace Tompkins, not a party to the bankruptcy proceedings except as brought in as a party to the summary proceedings by the above-mentioned order to show cause, who asserts title, and, as to the real estate, presents her recorded deed thereof and shows that after the giving of the deed she was at times living on the farm with Logan and wife,* and that as to the personal property she mortgaged the farm, and with the proceeds of the mortgage purchased same. I may assume that if no objection had been made to determining the questions as to the personal property in this summary way, the referee would have had power to make the order he did make as to it. *But has the referee any power to direct a third party to convey real estate held under a recorded deed, even if the facts proved show clearly that such third person holds as a mere trustee or agent for the bankrupt?*

"It has been decided that the referee in case of personal property may and must determine whether the claim of a third person who claims to be an adverse claimant is real or fictitious, merely colorable (Mueller vs. Nugent, 184 U. S. 1, 15, 22 Sup. Ct. 269, 46 L. ed. 405). An assignee for the benefit of creditors is but the agent, at best, of the bankrupt who made the assignment (Bryan vs. Bernheimer, 181 U. S. 188, 21

Sup. Ct. 557, 45 L. ed. 814). *In short, a third person having possession of personal property which in fact clearly belongs to the bankrupt is not an adverse claimant for the reason he says he is.* But if such third person has a bill of sale of such personal property, describing it, which he took from a person other than the bankrupt who, in fact, owned the property, and the claim of the trustee in bankruptcy is that such third party took such bill of sale by collusion with the bankrupt more than four months before bankruptcy, the filing of a petition, and to cheat and defraud creditors, and this is denied by such third person, who also claims that he is in possession and there is a real question as to who has possession, may the whole matter be tried before the referee and determined by him? Put deed in place of bill of sale and real estate in place of personal property and may the referee hear and determine the whole question and make a valid and binding order for the conveyance of the property to the trustee?"

The court in the opinion then discussed the circumstances under which title to the land in the Logan case was taken by the third party, and after referring to the fact that the referee found that the claim of such third party was merely colorable, proceeded to say:

"Accepting these findings which the referee had jurisdiction to make, and which it was his duty to make, if the evidence warranted them, and Grace Tompkins was not an adverse claimant at and before the filing of the petition in bankruptcy. * * *

"In Louisville Trust Co. vs. Comingor, 184 U. S. 18-25, 22 Sup. Ct. 293, 296 (46 L. ed. 413), the court said: 'We have just held in Mueller vs. Nugent, *ante* 1, that the District Court has power to ascertain whether in the particular instance the claim asserted

is an adverse claim existing at the time the petition was filed. And, according to the conclusion reached, the court will retain jurisdiction or decline to adjudicate the merits.' * * *

"In Mueller vs. Nugent, 184 U. S. 1, 14, 22 Sup. Ct. 269, 275 (46 L. ed. 405), the court held that: 'The bankruptcy court has power to compel the surrender of money or other assets of the bankrupt in his possession, or that of some one for him, on petition and rule to show cause.'

"Also, 'The refusal to surrender property of the bankrupt does not in itself create an adverse claim at the time the petition is filed'."

The referee in this present case has found that the claim was not made in good faith, but was made in flagrant fraud, and that there was no basis for the claim.

If it be within the judicial power of the bankruptcy court to determine the good faith of the person asserting the claim, upon what shall the court act? Upon the facts or upon the form of a claim? If the Court may not determine the facts, it is submitted that the summary jurisdiction could be sustained only when the adverse claimant would admit the wrong; which places the power of determining the matter, not in the court, but in the wrong-doer.

The bankruptcy court is a real judicial tribunal exercising equity powers; it is not an administrative bureau. So it must have power to determine the fact upon which its jurisdiction depends.

It is believed that the decisions cited above cannot be reconciled with the opinion of the Circuit Court in the present case, that:

> "In our judgment the meaning of that word (colorable) as used in that connection is that a claim alleged to be adverse is only colorably so when, admitting the facts to be as alleged by the claimant there is, as a matter of law, no adverseness in the claim." (R. 225.)

And

> "However improbable or even fraudulent this claim may be, yet that matter has no bearing upon determination of jurisdiction, but is pertinent only on the merits in the court properly having jurisdiction of the controversy." (R. 225.)

We believe the sound doctrine is that if the claim is made in bad faith and founded in fraud, it is colorable within the meaning of the law.

In the present case, the lower court found every fact necessary to sustain the summary jurisdiction (R. 13, 14, 15):

That the claim set up is colorable and fraudulent and not real;

That the fund is held for the bankrupt;

That the title has never passed from the bankrupt;

That the fund is an asset of the bankrupt estate.

This case presents squarely for determination the question:

> **Is the summary jurisdiction of the bankruptcy court to be determined by the facts as found by the court, or solely by the admission of the claimant?**

The decision of the Circuit Court of Appeals (R. 225) turns upon the fact that there was testimony "That a Mrs. Gessel, who was a stockholder in a corporation, which was

the immediate predecessor of the bankrupt, was given money from the assets of that company, with the permission of the only other stockholder with herself in that company, at a time when such company was entirely solvent; that the sums taken might have been declared as dividends; that this money was given to her mother in payment of indebtedness due from Mrs. Gessel."

The court then says:

> "However improbable or even fraudulent this claim may be, yet that matter has no bearing upon determination of jurisdiction. * * * " (R. 226)

This statement, we believe, marks the extreme limit toward which the courts have gone in denying the summary jurisdiction. And if this is the law, there is in practice no power in the bankruptcy court to restore an asset, even if embezzled or stolen, if it is in the possession of a third person asserting title; for if property is stolen or money embezzled it is taken necessarily with the idea of keeping it.

The decision of the Circuit Court of Appeals in this case means, when analyzed, that the summary jurisdiction can be invoked only when the holder asserts no title at all. If this be the law, then the language of this court, in May vs. Henderson, when it said that it will not permit the summary jurisdiction to be ousted by the mere assertion of a claim, is hard to understand, and the language of this court in Miller vs. Nugent, 184 U. S. 1,

> "but suppose that respondent had asserted that she had the right of possession by reason of a claim adverse to the bankrupt, the bankruptcy court has the power to ascertain whether any basis for such a claim actually existed at the time of the filing of the petition,"

must be changed to read:

> "the bankruptcy court has the power only to ascertain whether any claim, valid upon its face, is made by the respondent."

The power of the court, as defined in that decision, was to ascertain whether any basis for a claim existed in fact, or, in the words of the court "actually existed."

The power of the court is not to determine if there were a claim, for that is pre-supposed; but upon what the claim was founded.

Surely this court did not use that language without consideration. To examine into the basis of a claim is the exercise of judicial power; and when analyzed that is the essence of judicial power. The statement of the law, as laid down by Judge STONE in this case, is that the bankruptcy court has only the power to examine if a claim is asserted. The power to ascertain whether the claim has any foundation in fact, or as this court stated in Miller vs. Nugent, "to ascertain whether any basis for such a claim actually existed" would have to be exercised by some tribunal other than the bankruptcy court. An examination of Miller vs. Nugent shows that this court, in the plainest words of which the English language is capable, decided that the bankruptcy court is a court exercising judicial power; that that judicial power extends to the determination of the existence or non-existence of the foundation upon which the claim is made. If the claim has a real foundation in fact, then it must be determined in another tribunal. If there was no foundation for the claim, that is if it is fictitious, or fraudulent, then the bankruptcy court can say there is no real basis for the claim, and may proceed to issue its order upon the application of the trustee and compel the restoration of the asset to the bankrupt estate.

Surely, a court cannot be so confiding as to believe that one attempting to make away with assets of a bankrupt estate will admit that fact. Therefore, if the summary jurisdiction is to be a valid power, the decision of the Circuit Court of Appeals in this case that the summary jurisdiction may be invoked only if upon the admission of the adverse claimant the claim is merely colorable, cannot stand.

In the last analysis, what this court is to decide in this case is: Does the fact that a person, in possession of property alleged to be an asset of the bankrupt estate, asserts title and is willing to swear to ownership, divest the bankruptcy court of its power to order a return of the asset?

III.

The Appeal Should Have Been Dismissed.

The Circuit Court of Appeals in this case held that the petition to revise should be dismissed and the appeal allowed, because a matter of fact was involved. However, the entire opinion of the Court of Appeals turns upon the fact that the court was without jurisdiction because of the assertion of title by the respondent. The court did not attempt to disturb the findings of fact made by the referee and the District Court. The proper method of review, therefore, is by petition to revise.

> "Summary proceedings are proceedings and not controversies, and are reviewable by petition to revise."
>
> —Remington, 3rd ed., 3765-3766;
>
> Orinoco Iron Co. vs. Metzel, (6 C. C. A.) 230 Fed. 40.

Free vs. Shapiro, 5 Fed. (2) 578 (4th C. C. A.):

> "On a petition to superintend and revise, a District Court's findings of fact are conclusive in this court when there is substantial conflict in the testimony. In such a case we can only reverse if there is error in the application of the law to the facts."

The entire cause of the respondent is that the court was without jurisdiction to entertain the summary order. But as there was evidence to support the District Court's action the appeal should have been dismissed; for the only way it could be reviewed was by the petition to revise. The action of the court in dismissing the petition to revise has not been appealed from, but its action in allowing the appeal is before the court; and this court should direct the Circuit Court of Appeals to dismiss the appeal.

IV.

If it were admitted that every fact were as claimed by respondent, still the order was properly made.

This court held, in

Stellwagon vs. Clum, 245 U. S. 605,

that a trustee in bankruptcy, in collecting the assets of a bankrupt, is given the benefit of the state law as to ownership, though this may lead to different results in the various states.

The Bankruptcy Act of 1908, as amended, expressly gives to the trustee the status of a judgment creditor (Amendment 1910, Sec. 47A (2).

See Remington, (3rd ed.) Sec. 1507.

So, though every claim of the respondent were true, under the Oklahoma law, no title to the money ever passed from the corporation.

The law in Oklahoma is that a diversion of funds by an officer of a corporation, without a corporate act, does not pass the title of the fund so diverted from the corporation, and that a judgment creditor may levy an execution upon such property when found in the hands of a third person, whether such creditor was so at the time of the diversion of the funds or became so subsequently. The question is fully discussed by the Supreme Court of Oklahoma, in

Indian Land & Trust Company vs. Robert L. Owen, 63 Okl. 127.

Even in the absence of fraud, the delivery by an officer to another of an asset of a corporation does not pass title. Of course, if the specific asset were not located and a general suit for accounting were necessary, this could not be the subject of the summary jurisdiction. But the $10,000.00 in currency in the possession of the respondent is the same asset which was taken.

If this is the property of the corporation, a judgment creditor in Oklahoma could levy an execution on it in the hands of the respondent.

The trustee is, by the express provision of the bankruptcy act, vested with the title of all property of the bankrupt upon which a judgment creditor might levy an execution. See 70a (5).

—*In re* Garcewith, 115 Fed. 87 (C. C. A., 4th Cir.).

So, without going into the question of embezzlement or fraud as an element of jurisdiction, and admitting for the purpose of this statement that an officer of the corporation took a specific fund from the corporate treasury without corporate authority and delivered it to another, under the law in Oklahoma the title never passed, and if the specific fund can be located a judgment creditor of a corporation may levy an execution upon that fund. And a trustee in bankruptcy, having the status of a judgment creditor, may recover it in a summary proceeding, for the basis of the right is that it is a specifically located asset, title to which is in the bankrupt.

We do not believe that in the administration of the bankruptcy law, the trustee, having established that the claim of one asserting a right is patently and flagrantly fraudulent, colorable and fictitious, should be deprived of the summary remedy which the bankruptcy act has provided.

V.

The respondent has been heard fully as though in a plenary equity suit though in form a summary proceeding.

An examination of this case discloses that in the final analysis the only objection is as to the form of the proceeding. This court has held, in Miller vs. Nugent, 184 U. S. 1, that the bankruptcy court, through the referee in bankruptcy, exercises equitable jurisdiction of the court.

In this case the respondent has been fully heard. The petition was fully answered and the issues joined by reply. The respondent introduced all the evidence she desired,

and if the size of the record be any criterion of the fullness of the hearing, she has been fully heard as in the most plenary proceeding of a court of chancery.

Where there has been a full hearing of the case upon the merits the court will treat the proceeding as a plenary action, giving to it the effect of a suit in chancery.

—*In re* Eilers Music House, 270 Fed. 915.

In this case, if the trustee had filed a bill for an accounting and to impress the trust, the same evidence could have been introduced, and the same result arrived at. No substantial right has been denied the defendant at any stage of the case. The only right she claimed, which has been denied, was the right to have the trustee file a bill in chancery and proceed in another forum.

While these proceedings are called summary, they have certainly nothing of an arbitrary character. The examination proceeded for a month. The cases were briefed and argued in an almost interminable manner. In fact the respondent's claim could not have been heard more fully without an imposition on the court.

The findings of the referee show a careful and exhaustive consideration of the evidence and d i s c l o s e that he did not act in a summary or arbitrary manner, but considered and weighed every claim that has been made by the defendant, either through her response or by her testimony on the stand.

It is submitted that the decree of the Circuit Court of Appeals should be set aside, and the order of the District Court for the Eastern District of Oklahoma affirmed, and that the respondent should be ordered to deliver this fund to the trustee in bankruptcy.

PHILIP KATES,
Attorney for the Petitioner.

A. C. Mitchell

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No. 168

In the Supreme Court of the United States

October Term, 1925.

GEORGE HARRISON, TRUSTEE IN BANKRUPTCY, OF WESTERN ROPE MANUFACTURING COMPANY, INCORPORATED, BANKRUPT, *Petitioner,*

VERSUS

ANNA B. CHAMBERLIN, *Respondent.*

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF RESPONDENT.

HENRY B. MARTIN,
Attorney for Respondent.

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vs.

ANNA B. CHAMBERLIN, *Respondent.*

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *of* RESPONDENT.

Statement.

The statement of the case in petitioner's brief is incomplete and therefore misleading. The funds in question appear by all the evidence to have been, on September 18, 1917, the time when they were received by Mrs. Leftwitch, the property of the Western Rope and Cordage Company, the Western Rope and Manufacturing Company, the bankrupt, having no interest therein. The Western Rope and Cordage Company was not only solvent at the time but owed no debts except current bills which were paid every month and owed none of the claims proved against the

Western Rope and Manufacturing Company, the bankrupt. Ben Gessel and Mrs. Leftwitch owned all of the stock of the Western Rope and Cordage Company and ran the bussiness together. They paid no dividends but used the money of the company as their personal funds (R. 168-169). The transfer of the property of the Western Rope and Cordage Company to the bankrupt, which occurred later in September, 1917, did not include any indebtedness of either Ben Bessel or Mrs. Leftwitch to the company, but was charged off on the books before the transfer (R. 186).

The Master found that Agnes C. Leftwitch, afterwards Agnes Gessel, while an officer of the Western Rope and Cordage Company, withdrew fraudulently and without authority from the funds of said company, the sum of $9,500.00 and placed it to the credit of herself and the respondent in a bank at Broken Arrow. That said $9,500.00 was used by the respondent to purchase a farm near Broken Arrow which she afterwards sold for $13,000.00 and invested $10,000.00 thereof in securities which she later sold for $10,000.00 in currency, and that amount is now in her possession (R. 15).

The only conflict in the evidence was as to whether Mrs. Gessel wrongfully or rightfully received from the corporation these funds, and if wrongfully, whether Mrs. Chamberlin, the respondent, had notice of the fraud.

The points upon which the respondent relies are:

I.

A suit by a trustee in bankruptcy against officers of the bankrupt corporation for the conversion of corporate property is not for the recovery of property fraudulently transferred by the bankrupt, and hence not justiciable in a court of bankruptcy under the bankrupt act of July 1, 1898 (30 Stat. L. 544, Chap. 541; Comp. Stat., 1913, Sec. 9585), sections 23b, 70e, where the import of the allegations of the bill is not that the corporation has done anything, but that certain of its officers by false pretenses have withdrawn its funds.

II.

The trustee of a bankrupt corporation cannot recover against the officers of a predecessor of such corporation on account of the misuse of the property of such predecessor when it was solvent and owed no debts, and at a time when the bankrupt corporation was not in existence and could have owed no debts.

III.

A case where a person acted as an officer of a corporation and came into possession of some of its property under claim of right, and another person dealt with such officer receiving said property regards it as his own, invests it in real property, afterwards selling the same and reinvesting the property at a profit covering adverse, continuous and notorious possession of the property for years, is not a case for the summary process of a court of bankruptcy.

IV.

The undisputed evidence in the case contradicts the finding and conclusion of the master and of the District Court that the respondent's title to the funds in question was not good.

ARGUMENT.

Point I.

A suit by a trustee in bankruptcy against officers of the bankrupt corporation for the conversion of corporate property is not for the recovery of property fraudulently transferred by the bankrupt, and hence not justiciable in a court of bankruptcy under the bankrupt act of July 1, 1898 (30 Stat. L. 544, Chap. 541; Comp. Stat., 1913, Sec. 9585, sections 23b, 70e, where the import of the allegations of the bill is not that the corporation has done anything, but that certain of its officers by false pretenses have withdrawn its funds.

In *Parks, Trustee,* v. *Cameron,* 237 U. S. 616, 59 L. ed. 1147, an attempt was made to recover funds of the bankrupt company fraudulently and without authority misapplied by its directors and general manager. The case is clearly distinguished from that class of cases in which courts of bankruptcy have jurisdiction to avoid fraudulent transfers of the bankrupt's property. The case, on its facts and principles, is analogous to this case upon that point and appears to us to be controlling of the question.

Point II.

The trustee of a bankrupt corporation cannot recover against the officers of a predecessor of such corporation on account of the misuse of the property of such predecessor when it was solvent and owed no debts, and at a time when the bankrupt corporation was not in existence and could have owed no debts.

The leading case on the subject of the rights of subsequent creditors to question previous transactions of a

debtor is *Graham* v. *LaCrosse & Milwaukee R. R. Co.*, 102 U. S. 148, 26 L. ed. 106, wherein the court in an opinion by Mr. Justice BRADLEY, said:

"The main question is, whether the sale to Nash, made before the railroad company became indebted to the appellants, and when for all that appears it was perfectly solvent, even though made for the use and benefit of the officers referred to, can be set aside at the instance of the complainants, for the purpose of subjecting the lands to sale under their execution. And this question, we think, must be answered in the negative.

"It is a well settled rule of law, that if an individual, being solvent at the time, without any actual intent to defraud creditors, dispose of property, for an inadequate consideration, or even make a voluntary conveyance of it, subsequent creditors cannot question the transaction. They are not injured. They gave credit to the debtor in the status which he had, after the voluntary conveyance was made.

"The authorities on this subject are fully collected in the notes to *Sexton* v. *Wheaton*, 1 Am. L. Cas. (8 Wheat. 29), and in the opinion of Chief Justice MARSHALL in that case; and the general doctrine is affirmed in the case of *Mattingly* v. *Nye*, 8 Wall. 370 (75 U. S. XIX, 380).

"* * * But it is contended that this is a case in which the debtor corporation was defrauded of its property, and that as the company had a right of proceeding for its recovery, any of its judgment and execution creditors have an equal right; that it is a property right, and one that inures to the benefit of creditors.

"Conceding that creditors who were such when the fraudulent procurement of the debtor's property occurred—and cases to that effect have been cited—

the question still remains, whether, the debtor being unwilling to disturb the transaction, subsequent creditors have such an interest that they can reach the property for the satisfaction of their debts. We doubt whether any case, going as far as this, can be found. No such case has been cited in the argument. *Dicta* of judges to that effect may, undoubtedly, be produced, but they are not supported by the facts of the cases under consideration."

Fletcher, Cyclopedia Corporations, Volume 6, section 3735, page 6216:

> "*Right of creditors as affected by time when they became such.* According to some courts a recovery may be had for the benefit of creditors regardless of whether they became such before or after the dividends were declared, at least unless those whose claims accrue subsequently know that the dividend has been paid out of capital. Other courts, however, have held that a corporation, if solvent, has a right to declare a dividend as against subsequent creditors, and therefore creditors who become such after the payment of a dividend cannot recover the same from the stockholders on the subsequent insolvency of the company, but that its assets must first be appropriated to the payment of its existing debts before any portion of them can be distributed to the stockholders, and creditors who become such before the payment of dividends may recover the same from the stockholders where such payment renders the corporation insolvent. The burden of proving that the creditors for whose benefit a recovery is sought became such before the payment was made is on the plaintiff, where his allegation that such was the case is denied."

In *Nix* v. *Miller*, (Colo.) 57 Pac. 1084, the court announced the following rule:

"It is held by the highest authority in this county (*Graham* v. *Railroad Co.*, 102 U. S. 148), that the disposal by a corporation of any of its property cannot be questioned by any of its subsequent creditors. Other authorities might be cited, but this case is controlling. It is upon the ground that the diversion of funds occurred before the plaintiff became a creditor that appellant seeks to escape liability. If the facts of the case at bar brought it within the principle of the authority cited, we would not hesitate to recognize the rule therein announced, because not only is it a sound one, but, in the absence of a controlling rule in our own jurisdiction (of which there is none), we would be inclined to follow the decision of the august tribunal from which it emanated."

In *Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S. 371, 37 L. ed. 1113, this question was presented to the court, and in an opinion by Mr. Justice BREWER, the court announced the following rule:

"While it is true language has been frequently used to the effect that the assets of a corporation are a trust fund held by a corporation for the benefit of creditors, this has not been to convey the idea that there is a direct and express trust attached to the property. As said in 2 Pomeroy's Equity Jurisprudence, Sec. 1046, they 'are not in any true and complete sense trusts, and can only be called so by way of analogy or metaphor.'

"To the same effect are decisions of this court. The case of *Graham* v. *LaCrosse & M. R. Co.*, 102 U. S. 148 (26106), was an action by a subsequent creditor to subject certain property alleged to have been wrongfully conveyed by the corporation debtor, to the satisfaction of his judgment. And the very proposition here presented was then considered, and in respect

to it, the court, by Mr. Justice BRADLEY, said (page 160):

> 'It is contended, however, by the appellant that a corporation debtor does not stand on the same footing as an individual debtor; that, whilst the latter, has supreme dominion over his own property, a corporation is a mere trustee, holding its property for the benefit of its stockholders and creditors; and that if it fail to pursue its rights against third persons, whether arising out of fraud or otherwise, it is a breach of trust, and creditors may come into equity to compel an enforcement of the corporate duty. This, as we understand, is the substance of the position taken.
>
> 'We do not concur in this view. It is at war with the notions which we derive from the English law with regard to the nature of corporate bodies. A corporation is a distinct entity. Its affairs are necessarily managed by officers and agents, it is true; but, in law, it is as distinct a being as an individual is, and is entitled to hold property (if not contrary to its charter) as absolutely as an individual can hold it. Its estate is the same, its interest is the same, its possession is the same. Its stockholders may call the officers to account, and may prevent any malversation of funds, or fraudulent disposal of property on their part. But that is done in the exercise of their corporate rights, not adverse to the corporate interests, but coincident with them.'

"Solvent, it holds its property as any individual holds his, free from the touch of a creditor who has acquired no lien; free also from the touch of a stockholder who, though equitably interested in, has no legal right to the property. Becoming insolvent, the equitable interest of the stockholders in the property, together with their conditional liability to the creditors,

place the property in a condition of trust, first, for the creditors, and then for the stockholders. Whatever of trust there is arises from the peculiar and diverse equitable rights of the stockholders as against the corporation in its property and their conditional liability to its creditors. It is rather a trust in the administration of the assets after possession by a court of equity than a trust attaching to the property, as such, for the direct benefit of either creditor or stockholder."

Hamilton v. *Menominee Falls Quarry Co.*, (Wis.) 81 N. W. 876:

"It is now settled in this state, as the result of a series of decisions, that the directors of a going corporation are in no sense trustees for the corporate creditors in the management of the corporate business, even though the corporation be insolvent; and that it is only when the corporation ceases to be a going concern, or the situation is such that its directors know, or ought to know, that suspension is impending, that its assets become a trust fund, so that directors may not prefer themselves over general creditors (*Hinz* v. *Van Dusen*, 95 Wis. 503, 70 N. W. 657); and, further, that when the corporation is solvent, and there is no actual intent to defraud creditors, it may dispose of property for an inadequate consideraion, or by voluntary conveyance, as an individual may do, and subsequent creditors cannot question the transaction (*Shoemaker* v. *Lumber Co.*, 97 Wis. 585, 73 N. W. 333; *Graham* v. *Railroad Co.*, 102 U. S. 148, 26 L. ed. 106). This last proposition is founded upon very plain principles of justice and reason. A simple creditor has no interest in or lien upon the corporate property. If, after a corporation has conveyed a part of its property with no fraudulent intent, but for an inadequate consideration, there still remains ample corporate property to pay debts, then no existing creditor can com-

plain, for he has not been damnified; and, if this is true as to present existing creditors, it is necessarily and more clearly true as to subsequent creditors, who have not relied upon the conveyed property for security, or contracted with reference thereto."

In *Ratcliff* v. *Clendenin*, 232 Fed. 61, this court considering the identical proposition herein presented, in an opinion by Mr. Justice SANBORN said:

"This was a suit in equity by the trustee in bankruptcy of the Elevator Company to recover this $4,500.00 of Ratcliff, a stockholder, in the right of creditors of the corporation who held claims against the corporation which were incurred before that $4,500.00 was paid out, on the theory that this $4,500.00 was money of the insolvent corporation which was held by its officers in trust for its creditors when it was paid to Ratcliff, and that Ratcliff knew this fact and procured the payment of this money to him without giving any consideration therefor. Facts essential to this cause of action which the trustee pleaded were, *first*, that there were creditors of the Elevator Company represented by the trustee who held claims allowed against the estate of the bankrupt which were incurred by the corporation before at least some of this $4,500.00 was paid over to Ratcliff, for creditors having claims which accrued after those payments have no equity in any of this $4,500.00 superior to the equity of Ratcliff. *Hamilton* v. *Menominee Falls Quarry Co.*, 106 Wis. 352, 81 N. W. 876, 879. But the answer of Ratcliff denied that there were any claims of any creditors which accrued before all of the $4,500.00 was paid over to him by alleging that he had no knowledge or information sufficient to form a belief on that subject. The burden, therefore, was on the plaintiff to prove its averment of this essential fact and it made no proof thereof whatever. In the *second* place, the trustee

averred that the Elevator Company was insolvent when this $4,500.00 was paid, and that this money was a fund held in trust for the creditors of the corporation; that Ratcliff knew this fact and obtained the money without any consideration. Ratcliff denied these averments in his answer, and the burden was on the plaintiff to prove them, and there is no substantial proof of any of them.

"* * * As the plaintiff failed to prove that the Elevator Company was insolvent when the $4,500.00 was paid to Ratcliff, it failed to establish the fact that that sum or any part of it was ever charged with any enforceable trust or equitable lien in favor of any creditor of the corporation, or in favor of the trustee in bankruptcy. A solvent corporation, like a solvent individual, holds its property free from any enforceable trust or equitable lien in favor of its creditors. It is only when it becomes insolvent that such a trust or lien in favor, first of its creditors, and second of its stockholders, attaches to its property. *Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S. 371, 383, 385, 14 Sup. Ct. 127, 37 L. ed. 1113; *McDonald* v. *Williams*, 174 U. S. 397, 403, 19 Sup. Ct. 743, 43 L. ed. 1022; *Larence* v. *Greenup*, 97 Fed. 906, 908, 909, 38 C. C. A. 546, 549; *Great Western Mining & Mfg. Co.* v. *Harris*, 128 Fed. 321, 331, 63 C. C. A. 51, 61; *New Hampshire Sav. Bank* v. *Richey*, 121 Fed. 956, 961, 58 C. C. A. 294, 298. So it was that the plaintiff failed to prove any of the essential elements of the cause of action he pleaded, and the record discloses no equity in his favor which entitles him to recover of the defendant.

"Counsel for the trustee, however, argue that there was no formal declaration of a dividend, that no other stockholders had an income like that of the defendant paid to him on his investment, that section 1741 of the General Statutes of Kansas of 1909, provides that the directors of a corporation shall 'declare and

make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe,' that this is in legal effect to prohibit and the general law of the community forbids the payment of dividends out of capital, that the capital of the Elevator Company was impaired when the payments were made to Ratcliff, that there were no profits, and that for these reasons the payment of the $4,500.00 was unlawful. The answers to this contention are many and conclusive. If the contention stated a cause of action, it was a cause of action that was neither pleaded nor tried in the court below. It does not state a cause of action in favor of any creditor whom the trustee represents, because it fails to plead that any such creditor has any claim which accrued before the $4,500.00 was fully paid, or that the company was insolvent when that payment was made." (Italics ours.)

This case sustains the contention of the respondent, Anna B. Chamberlin, that the petition upon which the order to show cause was issued did not state facts sufficient to constitute a cause of action in favor of said trustee and against said Anna B. Chamberlin. Many other cases could be collected supporting the foregoing rule, but we deem a further continuation of the discussion of this particular question to be unnecessary.

Point III.

A case where a person acted as an officer of a corporation and came into possession of some of its property under claim of right, and another person dealt with such officer receiving said property regards it as his own, invests it in real property, afterwards selling the same and re-

investing the property at a profit covering adverse, continuous and notorious possession of the property for years, is not a case for the summary process of a court of bankruptcy.

The court *In re Rathman*, 183 Fed. 913, in discussing the jurisdiction of the bankruptcy court in summary proceedings, in an opinion by Judge SANBORN, said:

> "If the commencement of bankruptcy proceeding without more, without any act of the bankruptcy court or any of its officers, to give notice to adverse claimants, or to reduce the property claimed to belong to the bankrupt to the possession of the officers of that court as his property, gives it constructive possession, and hence a legal custody that enables it to determine by summary proceedings the merits of adverse claims to liens and titles to such property in the actual possession of others, then no case could ever arise in which any other court could have jurisdiction by plenary suit to determine the merits of such claims, for in every case a bankruptcy proceeding is commenced, and the only ground on which the jurisdiction to determine summarily the merits of such claims is sustained is that the bankruptcy court's legal custody of the property excludes the jurisdiction of every other court and gives it the power to determine summarily all claims to liens upon, or interests in, the property in such custody. But this theory flies in the face of the settled rule repeatedly announced by the Supreme Court that the actual possession by the bankruptcy court is the indispensable condition of its exclusive and of its summary jurisdiction here. In *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 536, 20 Sup. Ct. 1000, 1005 (44 L. ed. 1175), the court held that the clause of section 23 of the bankruptcy law giving jurisdiction of controversies at law or in equity between trustees as such and adverse claimants to the Circuit Courts in

the same manner and to the same extent as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupt and such adverse claimants 'indicates the intention of Congress that the ascertainment, as between the trustee in bankruptcy and a stranger to the bankruptcy proceedings, of the question whether certain property claimed by the trustee does or does not form part of the estate to be administered in bankruptcy, shall not be brought within the jurisdiction of the national courts solely because the rights of the bankrupt and of his creditors have been transferred to the trustee in bankruptcy'."

In re Interocean Transp. Co. of America, (N. Y.) 232, Fed. 408:

"*Bankruptcy. Jurisdiction of Court. Adverse Claims.* Claims asserted after bankruptcy by third persons to a fund placed by the bankrupt in possession of a custodian having no claim thereto, arising out of transactions before the bankruptcy, are adverse, and the court of bankruptcy is without jurisdiction to determine the same, except by consent."

Davis v. *Willey*, (Cal.) 263 Fed. 588:

"VAN FLEET, District Judge. This is an action at law by a trustee in bankruptcy to recover a certain fund alleged to have been transferred by the bankrupt to his brother in fraud of the rights of his creditors. It is admittedly prosecuted under the authority of section 70e of the Bankruptcy Act (Comp. St., Sec. 9654), which provides that: 'The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred,' etc.

"It is well established that the effect of this section is to clothe the trustee with no new or additional

right in the premises over that possessed by a creditor, but simply puts him in the shoes of the latter, and subject to the same limitations and disabilities that would have beset the creditor in the prosecution of the action on his own behalf; and the rights of the parties are to be determined, not by any provision of the Bankruptcy Act, but by the applicable, principles of the common law, or the laws of the state in which the right of action may arise. In other words, the Bankruptcy Act merely permits the trustee to assert the rights which the creditor could assert but for the pendency of the bankruptcy proceedings, and, if, for any reason arising under the laws of the state, the action could not be maintained by the creditor, the same disability will bar the trustee. Collier on Bankruptcy (10th ed.), 1042, (f) and (g); *In re Mullen*, (D. C.) 101 Fed. 413; *Holbrook* v. *First International Trust Company*, 220 Mass. 150, 107 N. E. 665; *Manning* v. *Evans*, (D. C.) 156 Fed. 106."

Kaigler v. *Gibson, et al.*, (Ga.) 264 Fed. 240:

"Under the pleadings, as well as the proof, Mrs. Gibson was an adverse claimant of the money and automobile in her possession at the time of the bankruptcy and the jurisdiction of a controversy with her over them is fixed by section 23 of the Bankruptcy Act (Comp St., Sec. 9607). By that section the trustee could sue in the federal court only as the bankrupt might have done had bankruptcy not intervened, with two exceptions; *first*, by consent of the defendant, and, *second*, in suits for the recovery of property under sections 60b, 67e, and 70e (Comp. Stat., Sec. 9644, 9651, 9654). There is no diversity of citizenship and no federal question, and the bankrupt could not have maintained suit in a federal court for the property. The trustee must therefore rely for jurisdiction on the exceptions stated."

Flanders v. *Coleman*, 250 U. S. 223, 63 L. ed. 948:

"Whether the District Court has jurisdiction to grant any relief must be determined upon a consideration of the allegations of the bill and the amendment thereto. If there be enough of substance in them to require the court to hear and determine the cause, then jurisdiction should have been entertained. Looking to the allegations of the bill and the amendment, as we have stated them, it appears that the trustee invoked the aid of Sec. 60b of the Bankruptcy Act as amended Feb. 5, 1903 (32 Stat. at L. 709, chap. 487, Comp. Stat. 1916, Sec. 9644, 1 Fed. Stat. Anno., 2nd ed., p. 1026), relating to preferential transfers made within four months before the filing of the petition in bankruptcy; also, Sec. 67e, Act of July 1, 1898 (30 Stat. at L. 564, Chap. 541 Comp. Stat. 1916, Sec. 9651, 1 Fed. Stat. Anno., 2nd ed., p. 1109), making fraudulent transfers within four months null and void, except as to persons acting in good faith, or for a present, fair consideration, and of Sec. 70e of the Act (30 Stat. at L. 566, Chap. 541, Comp. Stat. 1916, Sec. 9654, 1 Fed. Stat. Anno., 2nd ed., p. 1150), providing that the trustee may avoid any transfer of the bankrupt's property that any creditor might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder prior to the adjudication.

"Since the amendments to the Bankruptcy Act of Feb. 5, 1903, and June 25, 1910 (32 Stat. at L. 797, Chap. 487, 36 Stat. at L. 838, Chap. 412, Comp. Stat. 1916, Sec. 9586, 1 Fed. Stat. Anno., 2nd ed., p. 528), the District Courts of the United States are given concurrent jurisdiction with the state courts to set aside preferences under Sec. 60b of the act, and fraudulent transfers within four months prior to the filing of the petition under Sec. 67e of the act, and transfers under Sec. 70e, making void any transfer by the bankrupt of

his property which any creditor might have avoided, and giving the trustee the right to recover the same. See *Stellwagen* v. *Clum*, 245 U. S. 605, 614, 62 L. ed. 507, 511, 38 Sup. Ct. Rep. 215; *Collet* v. *Adams*, decided April 28, 1919 (249 U. S. 545, *ante*, 764, 39 Sup. Ct. Rep. 372).

"The opinion of the District Court as set forth in the record, shows that its conclusion, that there was no jurisdiction, was based upon a consideration of the evidence, from which it was found that no preference was shown under Sec. 60b, nor any fraudulent transfer under Secs. 67e or 70e. To justify its conclusion that it was without jurisdiction, the district judge cites certain decisions of this court: *Bardes* v. *First Nat. Bank*, 178 U. S. 524, in which this court held that under Sec. 23 of the Bankruptcy Act the District Court, could by the consent of the defendant, and not otherwise, entertain suits by the trustee against third persons to recover property conveyed by the bankrupt before the institution of the bankruptcy proceedings. It is sufficient to say of that case that it was decided under the terms of the act before the amendments of 1903 and 1910, respectively, to which we have referred, and which give concurrent jurisdiction to the state and federal courts. The District Court also cited *Harris* v. *First Nat. Bank*, 216 U. S. 382, 54 L. ed. 528, wherein no transfer of the bankrupt's property was alleged in the petition. The suit was one by the trustee to recover securities of the bankrupt, alleged to be held by the bank for the security of an overdraft, which it was averred, had been paid; and also to recover certain notes alleged to have been paid by the bankrupt.

"The opinion of the District Court shows that it really considered the merits of the case in reaching the conclusion that it was without jurisdiction. As this court has not infrequently said, jurisdiction must be determined not upon the conclusion on the merits of

the action, but upon consideration of the grounds upon which federal jurisdiction is invoked."

Other cases supporting this rule are:

First National Bank v. *Title & Trust Co.*, 198 U. S. 280, 49 L. ed. 1051;

Louisville Trust Company v. *Comingor*, 184 U. S. 18, 22 Sup. Ct. 293, 46 L. ed. 413;

Murphy v. *John Hofman Company*, 211 U. S. 562, 29 Sup. Ct. 154, 53 L. ed. 327;

Whitney v. *Wenman*, 198 U. S. 539, 25 Sup. Ct. 778, 49 L. ed. 1183;

Bardes v. *Bank*, 178 U. S. 524, 44 L. ed. 1175;

Drew v. *Meyers*, 116 N. W. 781;

Union Banking Co. v. *Truscott Boat Mfg. Co.*, (Mich.) 155 N. W. 716.

Point IV.

The undisputed evidence in the case contradicts the finding and conclusion of the master and of the District Court that the respondent's title to the funds in question was not good.

The evidence discloses that the Western Rope & Cordage Company was incorporated in 1915, by B. M. Gessel and Agnes C. Leftwich, who owned all the capital stock of said company, and conducted the affairs of said company until 1917, when pursuant to a minute of the Western Rope & Manufacturing Company, dated September 24, 1917, the property of said Western Rope & Cordage Company was transferred to said Western Rope & Manufacturing Company in payment of capital stock of said Western Rope & Manufacturing Company, of the value of $150,000.00.

The record shows that prior to the transfer of the property of the Western Rope & Cordage Company to the bankrupt company on September 30, 1917, B. M. Gessel was indebted to said Western Rope & Cordage Company in the sum of $27,647.74, as shown by his account with said company, and that said account of B. M. Gessel included the item of $9,500.00 herein alleged to have been fraudulently withdrawn from the funds of the Western Rope & Manufacturing Company by Agnes C. Leftwich, on September 18, 1917. That prior to said transfer, said account was charged off the books of the Western Rope & Cordage Company as a bad debt, and uncollectible, and did not constitute a part of the assets of said company sold to the Western Rope & Manufacturing Company, in payment of said capital stock.

The record shows that the transaction between said companies was that of sale and purchase, and there is nothing in the record anywhere that would tend to support the first finding of fact of said Special Master.

In the second finding of fact said Special Master found, that said $9,500.00 was fraudulently and without authority withdrawn from the funds of the Western Rope & Cordage Company by Agnes C. Leftwich. The record shows that at the time said Western Rope & Cordage Company was incorporated by said Agnes C. Leftwich and B. M. Gessel, there was transferred to said corporation a business theretofore conducted by B. M. Gessel, and a man by the name of Woodward. That Agnes C. Leftwich paid into said corporation the sum of $3,600.00. From the date of the incorporation of said company up to and including September 30, 1917, when the property of the same was sold and transferred to the Western Rope & Manufacturing

Company, said company was prosperous and wholly solvent. Agnes C. Leftwich and B. M. Gessel, as owners of all the capital stock of said company, had exclusive and absolute control of the affairs of said company.

The record further shows that although said company conducted a large and important business, and that its profits for the year 1917 were approximately $195,000.00, no dividends were ever declared. Money was withdrawn from said company from time to time for the use of both Agnes C. Leftwich and B. M. Gessel, who were at that time engaged, which engagement resulted in their marriage on November 30, 1920.

On the date said sum was withdrawn the same was charged to the personal account of B. M. Gessel, and also entered in the journal and cash book of said company. There was no concealment, and if said Western Rope & Cordage Company were attempting to recover said funds said entries in its books would be conclusive evidence against it of notice of said transhaction.

City Electric & Street Railway Co. v. *First National Exchange Bank*, (Ark.) 31 L. R. A. 535:

> "The entries upon the books of the corporation are *prima facie* evidence against it as admissions. The records and books of the corporation become conclusive evidence against it when they are books and records of the corporation, and entries upon them have been duly made by the recording officers."
>
> —4 Fletcher, Cyc Corp., Secs. 2793 and 4047;
>
> 2 Thompson on Corporations, Sec. 1637, p. 726, and Sec. 1853, p. 923.

There is a conflict in the testimony as to whether or not B. M. Gessel actually knew of said transaction at the

time. He admits, however, that monthly statements of his account with said company, showing the items charged and credited to said account were prepared for his information. That he did not recall discussing the item of $9,500.00 with Agnes C. Leftwich, but that if she had asked him for anything he would not have refused her.

The entire capital stock of said company being owned by B. M. Gessel and Agnes C. Leftwich, and the company being wholly solvent, the withdrawal of said funds by Agnes C. Leftwich under the facts as disclosed by the evidence in the record could not under any possible theory be fraudulent as to subsequent creditors on whose behalf this proceeding is prosecuted.

The conclusions of law of said Special Master, set out in said report, to the effect that equitable title to said sum of $9,500.00 never passed out of the Western Rope & Cordage Company; that the Western Rope & Manufacturing Company succeeded to the title thereto, until the appointment of a trustee when the same vested in him, and that the claim of Anna B. Chamberlin to said fund was based on fraud, and only colorable, and not real, and that said fund was an asset of the bankrupt estate, and subject to summary jurisdiction of the bankruptcy court, are not sustained by the evidence, and are contrary to the law and the evidence. There is no evidence in the record that Anna B. Chamberlin had any information concerning the source from which her daughter, Agnes C. Leftwich, obtained said fund, except the testimony of said Anna B. Chamberlin. She testified that her daughter, Agnes C. Leftwich, was indebted to her, and that it was her understanding that her daughter was making money in the business in which she was associated with B. M. Gessel.

The record shows that the owners of the entire capital stock of the Western Rope & Cordage Company either had actual knowledge of said transaction, and at the time consented thereto, or notice thereof was obtained within a short time thereafter by reason of the entries in the books of said company. It affirmatively appears from the record that the item of $9,500.00 charged to the account of B. M. Gessel with the Western Rope & Cordage Company, was never transferred to the Western Rope & Manufacturing Company. This being true, title to said item did not vest in said trustee upon his appointment, and qualification.

Since it is admitted in the record that the respondent, Anna B. Chamberlin, had retained said fund and the proceeds thereof in her possession, using it as she saw fit, and claiming it as her own, at all times since September 18, 1917, under the rule announced by the decisions herein cited, the same is not subject to the summary jurisdiction of the bankruptcy court.

The *American Fruit Product Co.* v. *Ward*, 99 N. Y. Sup. 717, was an action wherein the plaintiff sought to recover for breach of contract.

An option was given to plaintiff covering all of the assets of the corporation, which option the plaintiff elected to exercise. Among other things the question of the ownership of a certain horse was involved in this action. All the capital stock of said corporation was owned by the defendant and members of his family, and prior to the execution of said option the horse in question had been bought by the defendant with funds of the corporation, and given to a daughter of the defendant.

The court held that there was no reason why the funds of the corporation could not be used for this purpose since

all the capital stock of the corporation was owned by the defendant, and members of his family, and all the stockholders consented to said transaction.

—*Watts* v. *Gordon*, (Tenn.) 153 S. W. 483;

Jordut v. *Reuter Hub & Spoke Co.*, (Mo.) 87 S. W. 29;

Central Mfg. Co. v. *Montgomery*, (Mo.) 129 S. W. 460;

Norma Mining Co. v. *Mackay*, 241 Fed. 640;

Linn & Lane Timber Company v. *United States*, 236 U. S. 574, 59 L. ed. 725;

Wheeler v. *Abilene National Bank Building Company*, 159 Fed. 391 (8th Cir.).

The foregoing decisions clearly establish the proposition that persons owning the entire capital stock of a corporation are in legal effect the corporation, and that transactions of such persons dealing with the affairs of the corporation are binding upon the corporation.

The final judgment entered in said cause overruling the exceptions of the respondent, Anna B. Chamberlin, to the report of said Special Master, finding the facts in favor of said trustee, and against said respondent, Anna B. Chamberlin, finding that Anna B. Chamberlin had in her possession the sum of $10,000.00 without color of title, and in fraud of the rights of the Trustee in Bankruptcy, and that said sum was an asset of said bankrupt estate, and ordering and directing said respondent, Anna B. Chamberlin, to forthwith deliver said sum to said George Harrison, Trustee, is not sustained by the evidence, on the findings of fact set out in the report of said Special Master and is contrary to law.

It appears from the report of said Special Master that the respondent, Anna B. Chamberlin, appeared specially, and objected to the jurisdiction of the bankruptcy court to make her a party to said proceedings, and to said summary proceedings, at all hearings before said Special Master.

The only controverted fact in the record is as to the circumstances under which said sum of $9,500.00 was withdrawn from the funds of the Western Rope & Cordage Company. All the evidence establishes that said fund was withdrawn on the 18th day of September, 1917. That on said date all the capital stock of said Western Rope & Cordage Company was owned by Agnes C. Leftwich and B. M. Gessel; that said company was solvent, and owed no debts except current bills. That its profits for the year, 1917, were approximately $195,000.00. That no dividends were ever declared, and paid out of the funds of said corporation since its organization in 1915. That on the date said fund was withdrawn the same was charged to the personal account of B. M. Gessel with said company; also entered in the journal and cash book of said company. That monthly statements showing the items charged and credited to the account of B. M. Gessel with said company were furnished to him for his information.

The record further shows that Agnes C. Leftwich and B. M. Gessel, were on said date said fund was withdrawn engaged in building up the business of said company, for their mutual benefit, they being on said date engaged, and were thereafter on November 30, 1920, married. That Agnes C. Leftwich was indebted to her mother, Anna B. Chamberlin, and deposited said sum of $9,500.00 to their joint credit in the First National Bank of Broken Arrow, Oklahoma. That the sum of $9,500.00 was withdrawn from

said joint account by said Anna. B. Chamberlin, and used in the purchase of a farm near Broken Arrow, Oklahoma, on October 2, 1917. That thereafter, on March 23, 1920, said farm was sold for the sum of $13,000.00, $10,000.00 of which was used to purchase certain real estate mortgages from the Exchange Trust Company of Tulsa, Oklahoma, and thereafter said mortgages were transferred and assigned to the Liberty National Bank of Tulsa, Oklahoma, for the sum of $10,000.00, which sum was in possession of said Anna B. Chamberlin on the date of the last hearing before said Special Master.

The record further shows that the Western Rope & Manufacturing Company, was incorporated in September, 1917. That on September 24, 1917, an entry was made in the minute book of said Western Rope & Manufacturing Company, reciting the acceptance of the transfer submitted by the Western Rope & Cordage Company, and authorizing and directing said secretary to purchase the property of the Western Rope & Cordage Company, as set forth in their proposal and in payment therefor to issue certificates of stock in the Western Rope & Manufacturing Company to the amount of $150,000.00.

That on September 30, 1917, and prior to the transfer of the property of the Western Rope & Cordage Company, to the Western Rope & Manufacturing Company, the account of B. M. Gessel with the Western Rope & Cordage Company amounting to the sum of $27,647.74, and including said item of $9,500.00, charged to said account on September 18, 1917, was charged off the books of the Western Rope & Cordage Company as a bad debt, and uncollectible, and treated as such in the income tax report of said company for said year.

Under the foregoing admitted facts the possession of said Anna B. Chamberlain of said fund could not be without color of title, and in fraud of the rights of the Trustee in Bankruptcy.

Under the decisions hereinbefore cited the Western Rope & Cordage Company would be bound by the transaction by which said funds were withdrawn, and since said company was solvent at the time, and none of the creditors represented by said Trustee in Bankruptcy were creditors of the Western Rope & Cordage Company at the time said funds were withdrawn, the court could not possibly find that said fund constituted an asset of the bankrupt's estate.

By reason of the foregoing facts and the further fact that the motion of the trustee to make additional parties on which the order purporting to make the respondent, Anna B. Chamberlin, a party to said bankruptcy proceeding was made did not state jurisdictional facts, which question was timely raised by objection thereto, said order was without jurisdiction and void. The petition of the trustee upon which the order to show cause issued did not state facts sufficient to constitute a cause of action in favor of said trustee, and against the respondent, Anna B. Chamberlin, for the reasons hereinbefore set out. The final decree, ordering and directing respondent, Anna B. Chamberlin, to forthwith deliver to George Harrison, Trustee of the Western Rope & Manufacturing Co., the sum of $10,000, is without jurisdiction, erroneous and void, said Anna B. Chamberlin not having at any time consented and submitted to the jurisdiction of the bankruptcy court to adjudicate said matter, and having at all times objected to the exercise of said jurisdiction by said court.

We respectfully submit that the opinion and judgment of the Circuit Court of Appeals is right and that the writ in this case should be dismissed.

Respectfully submitted,

HENRY B. MARTIN,
Counsel for Respondent.